Supreme Court, U.S.
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No. _____

In The

# Supreme Court of the United States

DR. C. PHILLIP JOHNSON,

*Petitioner,*

v.

MT. AIRY BAPTIST CHURCH, *et al.*,

*Respondents.*

**On Petition For A Writ Of Certiorari To The District Of Columbia Court Of Appeals**

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

I. Does the First Amendment automatically oust the jurisdiction of the District of Columbia courts, where the plaintiff's claim is based on construction and application of his employment contract with the church that the defendants serve as trustees?

II. Does the First Amendment impose special rules of pleading on the plaintiff, merely because the defendants in the action are trustees of a church, where the Complaint alleges breach of contract, violation of church bylaws and conversion of personal property?

III. May defendants in an action for breach of contract, conversion and injunctive relief assert the defense of ecclesiastic immunity under the First Amendment, despite previously invoking the jurisdiction of the court to resolve the dispute between the parties regarding the procedures used to remove Petitioner as pastor of the church?

## PARTIES TO THE PROCEEDING

Petitioners are Mt. Airy Baptist Church, a non-profit religious corporation organized under District of Columbia Code § 29-907, and Dr. Phillip Johnson. Respondents are Calvin Hollingsworth, Anna Chin, Leroy Chin, Thomas Peterson, Lillie Proctor, Carolyn Samuels, Charles Manuel, Stanley A. Garnett, Terry Nixon and Morris B. Heard, individuals whose actions were in violation of the bylaws of Mt. Airy Baptist Church and its contract with Dr. Johnson.

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## OPINIONS BELOW

The Superior Court of the District of Columbia entered its Order, granting defendants' motion to dismiss the Complaint, on September 24, 1998 ("Sup. Ct. Order"). App. 5-10. The Memorandum Opinion and Judgment of the District of Columbia Court of Appeals ("Mem. Op.") affirming the superior court judgment was entered February 3, 2000, App. 1-3, and the Court of Appeals Order denying the Petition for Rehearing and rehearing en banc was entered April 6, 2000. App. 11-12.

## JURISDICTION

The final judgment of the Court of Appeals for the District of Columbia was entered April 6, 2000, when that court denied Petitioner's timely petition for rehearing.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

**United States Constitution, Amendment I**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

**District of Columbia Code § 11-921 Civil Jurisdiction.**

(a) Except as provided in subsection (b), the Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District of Columbia.

. . . .

(b) The Superior Court does not have jurisdiction over any civil action or other matter (1) over which exclusive jurisdiction is vested in a Federal court in the District of Columbia. . . .

## STATEMENT

### Procedural History

The present litigation is the latest in a series of court actions between the trustees of Mt. Airy Baptist Church and Petitioner Dr. C. Phillip Johnson regarding Dr. Johnson's contract to serve as pastor of Mt. Airy Baptist Church ("the Church"). *See* App. 27-37. In prior court actions, brought by Respondent Trustee Calvin Hollingsworth, the Superior Court of the District of Columbia ruled on the merits, finding that Dr. Johnson's contract had been violated by the attempt to remove him as pastor. *See* Memorandum and Order, No. 98 CA 65, February 11, 1998, App. 31-32.

In the instant action, No. CA 4230-98, Dr. Johnson brought suit against the defendants in April of 1998, alleging that his contract as pastor had been violated by their attempt to remove him, and that the defendants had conspired to engage in acts "contrary to law, the Constitution and Bylaws of Church, and in violation of the

contract of employment of [Dr. Johnson]." Complaint, App. 60-61. The Superior Court ruled that it lacked subject matter jurisdiction over the dispute in its Order entered September 24, 1998, App. 9-10, and the Court of Appeals of the District of Columbia affirmed in an unpublished opinion. *See* Appendix 1-4.

**Statement of Facts**

On July 2, 1994, Mt. Airy Baptist Church and Dr. Johnson entered a written agreement (the "Agreement") by which Dr. Johnson was employed as the full-time pastor of the Church for an indefinite period of time. App. 19-26. The Agreement provides:

> Termination. The following terms shall govern termination of this Agreement:
>
> (a) If at any time the Church shall become dissatisfied with the services of Rev. Johnson, and has exhausted Matthew 18:15-35, and asks for Rev. Johnson's resignation (Psalms 105:15 and I Chronicles 16:22), the Congregation shall take a vote and be governed by the majority vote of the eligible voting members under the guidelines of Article VI. Section 2(h) of the Church Constitution. At the time of this vote, the house will be polled prior to voting and the vote shall be taken by a standing vote. A two-thirds (2/3) vote of the total eligible voting members is required to constitute a majority. If the majority of the eligible voting members vote to terminate this Agreement, the Church shall pay Rev. Johnson a minimum of three (3) months salary in advance as severance pay. If the Church fails to make this severance payment, Rev. Johnson shall continue under this

> Agreement until such severance payment is made.

App. 23-24.

In addition, the Agreement provides that in the event of conflict between it and the Church's Constitution and/or By-laws, the Agreement "shall be controlling and shall take precedent [sic.] over such documents." App. 24. Finally, the Agreement provides that it "shall in all respects be interpreted, construed and enforced in accordance with *and governed by the laws of the District of Columbia.*" App. 25-26. (Emphasis added.)

In 1998, in a prior action brought in the Superior Court of the District of Columbia by the Respondents against Dr. Johnson, the Respondents sought a permanent injunction against Dr. Johnson, to prohibit him from holding himself out as the pastor of Mt. Airy Baptist Church, coming upon the property of Mt. Airy Baptist Church without an express invitation from the Respondents, and interfering with the business affairs of Mt. Airy Baptist Church. *See* App. 31-33. The matter was tried to the court, and on February 11, 1998, Judge Joan Zeldon ruled that the "heart of this dispute is the question whether [Dr. Johnson] was lawfully terminated pursuant to the employment Agreement between him and the Church. . . . " App. 31. Holding that the purported termination was, indeed, in violation of Dr. Johnson's employment agreement, the Superior Court ruled on the merits against the Respondents, and denied Respondents' action for a permanent injunction. App. 31-32. That ruling, which is now final, was not appealed.

Dr. Johnson filed the instant action in June of 1998. In it, he alleged that jurisdiction of the District of Columbia court existed pursuant to D.C. Code Ann. § 11-921. App. 57. The Complaint alleged that Respondents had purported to terminate Petitioner's employment in April, 1998, and that the procedures used were in violation of the Church Bylaws and breached his employment contract. *See* App. 56-58, 60-61. Petitioner sought money damages, and injunctive relief prohibiting Respondents from denying him access to the premises and to the pulpit on Sundays, and for other appropriate relief. App. 58-61. He also alleged claims against Respondents for conversion of his personal property. App. 61.

The superior court ruled, on the basis of the allegations in the Complaint only, that it lacked subject matter jurisdiction because the Establishment Clause and the Free Exercise Clause "grant churches immunity from civil judicial proceedings." *See* Sup. Ct. Order, App. 8-9. Despite the express language of the Agreement, requiring that it be "governed by the laws of the District of Columbia," App. 24, the superior court did not consider the actual content of the bylaws or Dr. Johnson's contract, nor did it permit the factual dispute regarding the possibility that these documents could be interpreted using neutral principles of construction to go to trial. *See* Sup. Ct. Order, App. 8-9.

The court of appeals affirmed, ruling that Dr. Johnson had failed to establish that the instant suit "falls within one of the narrow exceptions" to the constitutional bar on resolving an "ecclesiastic dispute." *See* Mem. Op., App. 3. Like the superior court, the court of appeals failed to examine the documents, their wording, or the

merits of the dispute, and made no findings regarding the application of neutral principles of law to the instant employment dispute between the parties. *See* App. 2-3.

## REASONS FOR GRANTING CERTIORARI

### I. AN IMPORTANT CONSTITUTIONAL QUESTION IS PRESENTED BY THE CONFLICT BETWEEN THE APPROACHES OF THE VARIOUS STATE HIGH COURTS AND THE FEDERAL COURTS OF APPEALS REGARDING THE PROCEDURES AND PLEADING REQUIREMENTS IMPOSED BY THE FIRST AMENDMENT IN DISPUTES THAT INVOLVE CHURCHES AND THEIR EMPLOYEES.

The District of Columbia Court of Appeals ruled in this case that merely because the instant dispute involves trustees of a church and its pastor, the plaintiff, Dr. Johnson, had the burden of disproving facts alleged as an affirmative defense by the Respondents in support of their claimed defense of immunity under the First Amendment. *See* Mem. Op., App. 2-3. This ruling is at odds with the holdings of other high courts that follow the normal rules of pleading and procedure in such cases. The question whether the First Amendment imposes special pleading and proof rules is unresolved and should be settled. Litigants and their counsel are usually faced with a hodgepodge of issues which are inexplicably intertwined with the Free Exercise and Establishment Clauses of the First Amendment. The ultimate question relates to who bears the burden of establishing the defense of ecclesiatic immunity, the church, or its pastor, or members of a church congregation. Here, the case was brought in the

District of Columbia Superior Court, a court of general jurisdiction. *See* D.C. Code § 11-921 (Westlaw 2000). Even so, the court ruled that it lacked subject matter jurisdiction because the complaint "fails to make clear the precise nature of the suit." *See* Mem. Op., App. 3. The approach taken by the District of Columbia raises the specter of plaintiffs who are unable to obtain relief upon purely secular claims, merely because the defendants happen to be church trustees.

This Court ruled long ago that it is wholly inconsistent with the American concept of the relationship between church and state to permit civil courts to determine ecclesiastical questions. *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 727-29, 20 L. Ed. 666, 676-77 (1872). But this does not mean that the courts may not resolve any issue in which a church or denomination is a party. *Id.* Whether government action causes excessive entanglement depends on the nature of the intrusion into religious administration, the character and purpose of the involved institutions, and the resulting relationship between the religious authority and government. *Lemon v. Kurtzman*, 403 U.S. 602, 615, 91 S. Ct. 2105, 2112, 29 L. Ed. 2d 745 (1971). If a claim involves core issues of ecclesiastical concern, the potential for excessive government precludes judicial review. *Serbian E. Orthodox Diocese for the U.S. & Can. v. Milivojevich*, 426 U.S. 696, 721-23, 96 S. Ct. 2372, 2386-87, 49 L. Ed. 2d 151 (1976) (holding that the First Amendment barred judicial review of diocese reorganization, which was conducted pursuant to church constitution).

However, it has long been settled that if the court can resolve the dispute by looking only to neutral principles

of law, judicial review is permissible. *See Jones v. Wolf*, 443 U.S. 595, 602-05, 99 S. Ct. 3020, 3025-26, 61 L. Ed. 2d 775 (1979); *Maryland & Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 90 S. Ct. 499, 24 L. Ed. 2d 582 (1970). This is true, even though courts must refrain from considering claims that require "a searching and therefore impermissible inquiry" into church governance. *Milivojevich*, 426 U.S. at 723, 96 S. Ct. at 2387.

Consistent with these authorities, there is general agreement among lower courts that churches are not – and should not be – above the law. Like any other person or organization, they may be held liable for their torts and upon their valid contracts. Their employment decisions may even be subject to Title VII scrutiny, where the decision does not involve the church's spiritual functions. *See, e.g., EEOC v. Mississippi College*, 626 F.2d 477 (5th Cir. 1980), *cert. denied*, 453 U.S. 912, 101 S. Ct. 3143, 69 L. Ed. 2d 994 (1981) (Title VII could be applied to promotion of secular teacher in religious educational institution); *EEOC v. Southwestern Baptist Theological Seminary*, 651 F.2d 277 (5th Cir. 1981), *cert. denied*, 456 U.S. 905, 102 S. Ct. 1749, 72 L. Ed. 2d 161 (1982) (Title VII applicable to administrative and support staff at a seminary); *EEOC v. Pacific Press Publ'g Ass'n*, 676 F.2d 1272 (9th Cir. 1982) (editorial secretary at church-affiliated publishing house); *Whitney v. Greater New York Corp. of Seventh-Day Adventists*, 401 F. Supp. 1363 (S.D.N.Y. 1975) (typist-receptionist).

This Court has ruled that the First Amendment does not shield real property disputes from resolution, even if church documents such as a church constitution must be

considered. *See Wolf*, 443 U.S. at 604, 99 S. Ct. at 3026. If the inquiry can be performed in purely secular terms without relying "on religious precepts in determining whether the document indicates that the parties have intended to create a trust," the bar of ecclesiastic immunity does not apply. *Id.* But the extent to which such immunity applies to dispute involving contractual rights and claims and personal property claims has not been specifically addressed by this Court.

Moreover, the holding of the Court of Appeals in this case reveals the significant uncertainty surrounding the procedures and rules to be applied when a defendant asserts a claim of ecclesiastic immunity under the First Amendment, as against claims of breach of contract and conversion of personal property. The court in this case held that the trial court properly dismissed the case "for want of subject matter jurisdiction." *See* Mem. Op., App. 3. This ruling prevented the Petitioners-plaintiffs from having a trial on the facts alleged in support of the defendant's immunity claim. The rule followed by the District of Columbia court places an impossible burden on the plaintiff, in effect taking the Respondents' word for the proposition that the case would involve the court in church doctrine if plaintiff's claims were considered on their merits. *See* Mem. Op., App. 3.

Other courts have not found sweeping protection in the First Amendment for every party who merely asserts the affirmative defense of ecclesiastic immunity. Thus, in *Holmstrom v. Sir*, 590 N.W.2d 538 (Iowa 1998), the court ruled that church members who alleged that the defendants had violated church bylaws were entitled to have their complaint considered on the merits, because the

pleadings presented claims relating to civil, contract and property rights. Therefore, the action would not be dismissed just because the claims were involved in or arose from a church controversy. *Id.* at 540-41. Similarly, in *Baugh v. Thomas*, 56 N.J. 203, 265 A.2d 675 (1970), the New Jersey Supreme Court held that a civil court could review the ministerial vote-tallying process by which a church member was expelled, since it involved determining only whether the vote was held in accordance with established procedures that were neither ambiguous nor vague. *Id.* at 205, 265 A.2d at 676. New Jersey courts have consistently ruled it proper to resolve intra-church disputes where no question of religious doctrine or polity was involved. *Id.*; *see also Kleppinger v. Anglican Catholic Church, Inc.*, 314 N.J. Super. 613, 625, 715 A.2d 1033, 1039 (1998). Other state courts have applied similar principles in deciding whether particular disputes should be heard in civil courts. *See, e.g., Bey v. Moorish Science Temple of America, Inc.*, 130 Md. App. 543, 551, 747 A.2d 241, 245 (2000) (recognizing that church disputes may be resolved through neutral principles of law, and pointing out that this approach is "completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity"); *Church of God Pentecostal, Inc. v. Freewill Pentecostal Church of God, Inc.*, 716 So. 2d 200, 205-06 (Miss. 1998) (recognizing the factual nature of immunity question, and resolving the issue by excluding certain evidence involving church doctrine).

These state courts have recognized that the resolution of a claim of ecclesiastic immunity is essentially factual, and that a party should not be permitted to oust

the court's jurisdiction and maintain the status quo merely by alleging that the dispute involves a church.

In contrast, the court in *Bell v. Presbyterian Church*, 126 F.3d 328 (4th Cir. 1998) ruled that subject matter jurisdiction was lacking over a dispute between a pastor, who alleged that his termination breached his contract, and the church that allegedly breached the contract. *Id.* at 332-33. As in the instant case, the *Bell* court made its ruling on the basis of the pleadings, and did not permit the plaintiff to establish the underlying facts which could have shown that the dispute was essentially secular. *See id.* Other courts have taken a similar approach. *See, e.g., Lewis v. Seventh-Day Adventists Lake Region Conference*, 978 F.2d 940, 942-43 (6th Cir. 1992) (ruling based on pleadings, holding that First Amendment barred civil review of employment dispute between church and minister).

The approach used by these courts adds a significant burden to the normal pleading requirements applied in all other cases. Ordinarily, a complaint may be dismissed for failure to state a claim upon which relief may be granted only where it appears beyond doubt that the plaintiff can prove no set of facts entitling him to relief. *Bouchet v. National Urban League, Inc.*, 730 F.2d 799, 805 (D.C. Cir. 1984) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 101-02, 2 L. Ed. 2d 80 (1957)). For this purpose, the complaint is to be construed in the light most favorable to the plaintiff, with all well-pled allegations of fact and reasonable conclusions therefrom taken as true. *See, e.g., Shear v. National Rifle Assoc. of America*, 606 F.2d 1251, 1253 (D.C. Cir. 1979).

However, the courts in *Bell, Lewis* and this case have grafted additional pleading requirements, claiming that the First Amendment imposes this burden. *See Bell*, 126 F.3d at 332; *Lewis*, 978 F.2d at 942-43; Mem. Op. App. 2-3.

Certiorari should be granted to resolve the uncertainty and the disagreement between these differing approaches to the question of ecclesiastic immunity under the First Amendment, as against breach of employment contract and conversion claims.

## II. THIS COURT HAS NOT PASSED ON THE QUESTION OF WHETHER PARTIES TO A DISPUTE INVOLVING A CHURCH MAY CLAIM ECCLESIASTIC IMMUNITY AFTER HAVING PREVIOUSLY SUBMITTED THEIR DISPUTE TO A CIVIL COURT FOR RESOLUTION.

There are a number of lower court cases that have held that a church may give up its first amendment immunity by invoking the jurisdiction of civil courts in an intra-church dispute. *See, e.g., Gipe v. Superior Court*, 124 Cal. App. 3d 617, 628, 177 Cal. Rptr. 590, 595 (1981) (citing *Eldership v. Church of God at Sharpsburg*, 396 U.S. 367, 368, 90 S. Ct. 499, 500, 24 L. Ed. 2d 582 (1970) (regional church sued local churches and others to prevent withdrawal from regional church and to determine control of church property); *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449, 89 S. Ct. 601, 606, 21 L. Ed. 2d 658 (1969) (injunction granted to local churches to enjoin trespass on church property reversed since based on civil court interpretation of church doctrine); *Presbytery of Riverside v. Community Church of Palm Springs*, 89 Cal. App. 3d 910, 920, 152 Cal. Rptr. 854, 859, *cert. denied*, 444 U.S.

974, 100 S. Ct. 469, 62 L. Ed. 2d 389 (1979) (neutral principles of law applied to property dispute between general church and local church); *Samoan Congregational Christian Church in the United States v. Samoan Congregational Christian Church of Oceanside*, 66 Cal. App. 3d 69, 75-77, 135 Cal. Rptr. 793, 796-98 (1977) (association of churches sued to impress trust on assets of member church); *Metropolitan Baptist Church of Richmond, Inc. v. Younger*, 48 Cal. App. 3d 850, 858-59, 121 Cal. Rptr. 899, 903-05 (1975) (church petitioned for authority to distribute liquidated assets)). *See also Stony Island Church of Christ v. Stephens*, 54 Ill. App. 3d 662, 12 Ill. Dec. 299, 369 N.E.2d 1313, 1317 (1977) (church sued to remove minister from church premises and to restrain interference with church property; vacation of arbitration award concerning contractual dispute regarding termination of services and right to possession of church property not involving any element of religion).

Here, the Respondents have previously sought and obtained rulings by the District of Columbia courts on matters directly concerned with the dispute at issue in this litigation. Thus, in 1998, the Respondents sued Dr. Johnson, alleging that he had been terminated from his position with Mt. Airy Baptist Church. *See* App. 31-32. Respondents lost that lawsuit on the merits. *Id.* Subsequently, when Dr. Johnson filed the instant litigation on behalf of Mt. Airy Baptist Church, Respondents asserted the defense of ecclesiastic immunity, claiming that the District of Columbia courts lacked subject matter jurisdiction. Thus, despite their prior agreement to submit to the

jurisdiction of the District of Columbia courts, Respon-

will be encouraged to disavow their reliance on civil court procedures, and engage in a "heads I win – tails you lose" approach to the court system.

This Court has ruled that courts may decide church-related disputes, provided such resolution will not require examination of church doctrine. *See Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 445, 89 S. Ct. 601, 21 L. Ed. 2d 658 (1969); *Wolf*, 443 U.S. at 602, 99 S. Ct. 3020. However, this Court has never determined if persons associated with a church can first invoke the jurisdiction of civil courts over its dispute with a particular party, and later assert ecclesiastic immunity in order to avoid an action brought regarding the same dispute by the defendant in the former case. Certiorari should be granted to determine whether persons associated with a church are permitted to seek resolution of a dispute only when it suits them, or if they have waived their objection to jurisdiction by participating in litigation regarding the merits of the dispute.

## CONCLUSION

For the reasons stated above, this petition is well taken and should be granted.

Dated: July, 2000

CLEMENT THEODORE COOPER
*Counsel of Record*
*Attorney for Petitioner*

**DISTRICT OF COLUMBIA COURT OF APPEALS**

**No. 98-CV-1529**

MT. AIRY BAPTIST CHURCH, ET AL.,

APPELLANTS,

V.

CA-4230-98

CALVIN HOLLINGSWORTH, ET AL.,

APPELLEES.

**Appeal from the Superior Court of the District of Columbia Civil Division**

**(Hon. Ann O'Regan Keary, Trial Judge)**

**(Argued January 6, 2000 Decided February 3, 2000)**

Before TERRY and STEADMAN, *Associate Judges*, and BELSON, *Senior Judge*.

## MEMORANDUM OPINION AND JUDGMENT

(Filed Feb. 3, 2000)

The effective appellant in this case, Dr. C. Phillip Johnson,[1] brought the instant suit against the trustees of Mt. Airy Baptist Church after his attempted termination as pastor in April 1998. The trial court dismissed for lack of subject matter jurisdiction by reason of the First Amendment.

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[1] The law suit was brought in the name of Mt. Airy Baptist Church as well as Dr. Johnson. The underlying dispute, however, appears to revolve in part around who speaks for the Church, a nonprofit religious corporation organized under the laws of the District of Columbia.

1. Dr. Johnson first contends that appellees "waived" subject matter jurisdiction by filing an earlier suit against him in Superior Court.[2] Dr. Johnson never raised this argument in the trial court. His opposition to appellees' motion to dismiss was limited solely to whether the trial court had jurisdiction under an "exception" to the immunity defense. In accordance with well-established appellate practice, we will not consider this argument raised for the first time on appeal.[3] *See, e.g., Malik v. District of Columbia*, 703 A.2d 1250, 1253 (D.C. 1998).

2. Dr. Johnson further contends that, in any event, the trial court in fact did have subject matter jurisdiction. Whether or not a civil court may hear a particular ecclesiastic dispute depends upon whether doing so would violate the fundamental separation between church and state embodied in the First Amendment. Although there are limited exceptions for cases which would not unduly entangle the courts in religious matters, "generally, civil courts are not a constitutionally permissible forum for

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[2] A previous suit by the trustees of Mt. Airy, seeking an injunction against Dr. Johnson after an attempted December 1997 termination, was decided on the merits, but the trial court does not appear to have been presented with the subject matter jurisdiction question in that case.

[3] In any event, on the merits, see *B.J.P. v. R.W.P.*, 637 A.2d 74, 78 (D.C. 1994) ("subject matter jurisdiction may not be waived"); *McCray v. McGee*, 504 A.2d 1128, 1131 (D.C. 1986) ("neither silence nor consent of the parties can confer jurisdiction") (quoting *1425 F Street Corp. v. Jardin*, 53 A.2d 278, 279 (D.C. 1947)).

review of ecclesiastical disputes." *United Methodist Church v. White*, 571 A.2d 790, 793 (D.C. 1990).

Dr. Johnson contends that his suit falls within one of the narrow exceptions discussed in *White*. However, not only does Dr. Johnson offer no substantive legal argument on this point in his brief to us, *i.e.* explaining how the suit falls within a particular exception, but the complaint itself fails to make clear the precise nature of the suit. "[W]hen the First Amendment casts a shadow over the court's subject matter jurisdiction, the plaintiff is obliged to plead unqualified jurisdictional facts that clearly take the case outside the constitutional bar." *Bible Way Church of Our Lord Jesus Christ of the Apostolic Faith v. Beards*, 680 A.2d 419, 430 (D.C. 1996)). *See also West v. Morris*, 711 A.2d 1269, 1272 (D.C. 1998) ("In cases which may implicate conduct protected by the Free Exercise Clause, greater specificity of pleading is required than in other kinds of suits."). We see no basis in the record before us to overturn the trial court's ruling.

Accordingly, the judgment of the trial court is

*Affirmed.*

For the Court:

/s/ Garland Pinkston, Jr.
Garland Pinkston, Jr., Clerk

Copies to:

Hon. Ann O'Regan Keary

Clerk, Supeior [sic] Court

Clement Theodore Cooper, Esq.
P.O. Box 76135
Washington, DC 20013

Norman R. Evans, Esq.
1436 Fenwick Lane
Silver Spring, MD 20910

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

**CIVIL DIVISION**

| | | |
|---|---|---|
| MT. AIRY BAPTIST CHURCH, *et al.* | : | |
| Plaintiff, | : | C.A. No. 98ca4230 |
| | : | Calendar 8 |
| v. | : | Judge Keary |
| CALVIN HOLLINGSWORTH, *et al.* | : | |
| Defendant. | : | |

**ORDER**

This matter comes before the court upon consideration of defendants' July 23, 1998 motion to dismiss complaint or in the alternative to dismiss Mt. Airy Baptist church as a party plaintiff, and the recently-filed "Plaintiff's Objections to Defense Motion to Dismiss and for Other Relief," filed on Sept. 15, 1998.[1] Upon full review of the legal arguments and authorities cited by defendants, and plaintiff's response thereto, and the full record in this case, this court has determined that defendants' motion must be **GRANTED.**

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[1] Plaintiffs had requested, and been granted, an extension to respond to defendants' motion to dismiss, however they failed to file their opposition timely, not responding until September 15, 1998, almost two months after the motion was filed.

In this case, plaintiff Rev. Phillip Johnson and co-plaintiff Mt. Airy Baptist Church[2] brought suit challenging the action of defendants, several trustees of the church, in terminating the employment of plaintiff Johnson as the pastor of the church in April 1998. Plaintiffs also sought to enjoin the defendants from denying Rev. Johnson access to the church premises and to the pulpit on Sunday.[3] As asserted by defendants, and acknowledged by the plaintiffs, the crux of this case involves the issue of Rev. Johnson's status as the pastor of the church. ("[P]laintiff, Rev. Dr. C. Phillip Johnson has been wrongfully deprived access to the Church building and the office of Pastor to serve the congregation for which he was selected." Complaint at p.9, para.9) While defendants contend that Rev. Johnson was properly dismissed by vote at a duly constituted church meeting on April 18, 1998, the plaintiffs argue that he was not properly terminated in accordance with the church's By-laws. In light of the nature of these allegations, defendants have argued,

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[2] Defendants have requested that this court dismiss the action of the co-plaintiff, asserting that there is no authority for co-plaintiff Johnson to sue on behalf of the church, as Mt. Airy Baptist church is a non-profit religious corporation organized under D.C. Code sec. 29-907, and as such, suit may only be filed on its behalf by its trustees. In light of the court's ruling on the defendants' main argument, the court need not reach this issue.

[3] Pursuant to the Consent Order approved by the court on July 2, 1998, during the pendency of this action, which was set for a full, permanent injunction hearing on Sept. 21, 1998, there has been an arrangement permitting the plaintiff to preside over religious services at the church at alternating services, with the defendants, or a minister of their choice, presiding over the alternate services.

persuasively, that this court lacks subject matter jurisdiction to decide this case – a case which presents primarily an issue of interpretation of church By-laws and the internal operations and procedures of the church, particularly its customs of operating and its doctrines.

The law is well established that the First Amendment's Establishment Clause and Free Exercise Clause grant churches immunity from civil judicial proceedings, "in order to avoid subjecting religious institutions to defending their religious beliefs and practices in a court of law." *United Methodist Church, Baltimore Annual Conference v. White,* 571 A.2d 790 (D.C. 1990). Indeed, the Supreme Court has long ago determined that civil courts are not a constitutionally permissible forum for the resolution of ecclesiastical disputes. *Serbian Eastern Orthodox Diocese v. Miliojevich (Serbian),* 426 U.S. 696 (1976); *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church,* 344 U.S. 94 (1952). Only limited exceptions to this doctrine have been crafted by the courts, for instance, where an employee who is providing a purely secular service brings suit against a church, *see Corporation of Presiding Bishop v. Amos,* 483 U.S. 327 (1987) (building engineer held no duties remotely related to religious beliefs or duties), or where the issue was whether church officials had authority to discharge a pastor. *Tate v. Walker Memorial Baptist Church,* 282 A.D. 675, 122 N.Y.S.2d 182 (1953).

The circumstances in the instant case do not fall within these narrow exceptions. Indeed, our Court of Appeals has specifically proscribed judicial action in a very similar wrongful termination case, *United Methodist Church v. White, supra.* In that case the pastor brought

suit, like plaintiff Johnson, because he had been terminated as pastor, and sought to be reinstated, and to receive an award of damages. Like plaintiff Johnson, Rev. White contended that he was wrongfully terminated, in part because of church officials' violation of church policy and procedure. Rev. White contended that the church had failed to comply with its own regulations. The Court of Appeals reversed the trial court's denial of a dismissal motion which, like defendants', had requested dismissal on constitutional grounds. The Court noted, "[It] is well established that a civil court may not interfere in matters of church government, as well as matters of faith and doctrine . . . The right to choose a minister without judicial intervention 'underlies the well-being of religious community, for perpetuation of a church's existence may depend upon those whom it selects to preach its values, teach its message, and interpret its doctrines both to its own membership and the world at large.' " (Citations omitted.) *Id.* at 793-794. The Court further stated: "Any attempt by the civil courts to limit the church's choice of its religious representatives would constitute an impermissible burden on the church's First Amendment rights . . . Consequently, courts have concluded that employment disputes concerning the status of pastors are inherently ecclesiastical and cannot constitutionally be subject to review." (Citations omitted.) *Id.* at 794. In noting that the plaintiff was claiming that the church failed to comply with its own regulations, the Court in *United Methodist Church v. White* ruled that "this court, in order to review the merits of his claims would necessarily become entangled in matters of a highly religious nature, issues at the core of internal church discipline, faith and church

organization. Accordingly, we hold that the UMC is immune from defending its decision to terminate Rev. White." (Citations omitted.) *Id.* at 794-795.

It is most noteworthy that this principle that such conflicts must be resolved by church officials rather than the courts has previously been the basis of dismissals of two other cases arising from the conflicts between the plaintiff here, Pastor Johnson, and church officials. *See* Order, *Handon v. Johnson*, C.A. 96-2714, J. Kennedy, 6-12-96; Order, *Hughes v. Johnson*, C.A. 96-9739, J. Alprin, 2-7-97.[4] Similarly now, this constitutional principle must be applied in the instant case, where plaintiff is seeking to have the court enforce his interpretation of church By-laws, and determine whether the action of the church officials on April 18, 1998 effectively terminated his pastorship. Consistent with the defendants' arguments, and the authority of *United Methodist Church v. White, supra*, which plaintiffs have failed to counter, the court must decline to enmesh itself in such church governance questions.

Wherefore, in light of the defendants' argument in support of dismissal for lack of subject matter jurisdiction, as well as the controlling case law, and for all those other reasons stated in defendants' motion, it is hereby this 21st day of September,

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[4] In the more recent action arising from the same conflict between the same parties in the instant case, *Hollingsworth v. Johnson*, C.A. No. 98-65, (J. Zeldon) no jurisdictional or constitutional challenge was raised to the court's adjudication of the church dispute issue. That case ended in a denial of the church trustees' motion for an injunction in February, 1998.

**ORDERED:** that defendants' motion is **GRANTED.**

/s/ Ann O'Regan Keary
**ANN O'REGAN KEARY**
**JUDGE**
**(SIGNED IN CHAMBERS)**

**District of Columbia**
**Court of Appeals**

No. 98-CV-1529

MT. AIRY BAPTIST CHURCH, ET AL.,

Appellants,

CA4230-98

v.

CALVIN HOLLINGSWORTH, ET AL.,

Appellees.

BEFORE: Wagner, Chief Judge; *Terry, *Steadman, Schwelb, Farrell, Ruiz, Reid, Glickman, and Washington, Associate Judges; *Belson, Senior Judge.

ORDER

(Filed April 6, 2000)

On consideration of appellants' petition for rehearing and rehearing en banc, it is

ORDERED by the merits division* that the petition for rehearing is denied; and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it is

FURTHER ORDERED that the petition for rehearing en banc is denied.

PER CURIAM

Norman R. Evans, Esquire
1436 Fenwick Lane
Silver Spring, MD 20910

Copies to:

Honorable Ann O'Regan Keary

Clerk, Superior Court

Clement T. Cooper, Esquire
PO Box 76135
Washington, DC 20013-6135

MT. AIRY BAPTIST CHURCH
1100 NORTH CAPITOL STREET, N.W.
WASHINGTON, D. C. 20002

APPLICATION FOR PASTOR

NAME: (Last) Johnson (First) Charlie (Middle) Phillip

ADDRESS: (Street) 577 Hilltop Dr (City/State) Staunton, VA (Zip) 24401

TELEPHONE: (703) 885-6602

SSN: 228-58-4155

DATE OF BIRTH: 6/16/48

BIRTHPLACE: Martinsville, VA

MARITAL STATUS: (x) Married ( ) Single ( ) Separated ( ) Divorced

DATE OF BAPTISM: September, 1969

PLACE OF BAPTISM: Christian view Bapt Church, Spencer, VA.

NAME AND MAIDEN NAME OF WIFE:

Senie J Pickett

PLACE AND DATE OF BIRTH OF WIFE:

Onslow CO. North Carolina. 3/13/44

NAME AND DATES OF BIRTH OF ALL CHILDREN:

| NAME | DATE | PLACE OF BIRTH |
|---|---|---|
| Rev. W Jarvis Johnson | 1/13/65 | Jacksonville NC. |
| C Rafael Johnson | 6/21/71 | Martinsville, VA. |

Monica L. Johnson 9/7/72 Martinsville VA.

Natalya J Johnson 9/24/79 Martinsville, VA.

**PRESENT OCCUPATION:** Postmaster U.S. Postal Service

**PRESENT SALARY:** $3,000.00 Combined

**LENGTH OF SERVICE:** 6 years

**PRESENT HEALTH CONDITION:** (x) Excellent ( ) Good ( ) Fair ( ) Poor

## EDUCATION

**HIGH SCHOOL:**

**NAME:** G.W. Carver

**ADDRESS:** Fieldale, VA.

**DATE OF GRADUATION:** June, 1966

**SEMINARY:**

**NAME:** Virginia Seminary & College

**ADDRESS:** Lynchburg, Virginia.

**DID YOU RECEIVE A CERTIFICATE:** (x) Yes ( ) No

Master of Divinity

**COLLEGE:**

**NAME:** Averett College

**ADDRESS:** Danville, VA

**MAJOR:** Religion & Philosophy?/ Management

**DEGREE:** Bachelor of Arts

**DATE OF GRADUATION:** June, 1977

**OTHER STUDIES: GRADUATE** (x) Yes ( ) No

**DOCTORATE:** (x) Yes ( ) No

**(If yes, indicate place, subject and degree attained)**

Virginia Commonwealth University (Substance Abuse Counseling) Certificate

American Bible, Kansas City Missouri. Master of Philosophy DOCTOR DIVI

**ARE YOU LICENSED:** (x) Yes ( ) No

**(If yes, indicate date and place or license)**

(Date) June, 1970 (Place) Christian View Baptist, Spencer, VA.

**ARE YOU ORDAINED:** (x) Yes ( ) No

**(If yes, indicate date and place of ordination)**

(Date) April, 1972 (Place) Martinsville, VA. Smith River Bapt Association

**NAME OF ORDAINING BODY:** Smith River Baptist Association

**ARE PAPERS AVAILABLE: (x) Yes ( ) No** I was licensed to perform the rites of marriage in the District of Columbia, April, 1988. By order of the Superior Court of the District of Columbia.

## POSITIONS HELD

**LIST NAMES AND ADDRESS OF ALL CHURCHES SERVED, SPECIFICALLY STATING SIZE OF CONGREGATION, PROGRAMS INSTITUTED BY YOU, AND THE PERIOD OF SERVICE AT EACH CHURCH:**

**(Date)** 11/1986 to Present **(Place)** Mount Zion Baptist, Staunton, VA

Have an enrolled Membership of about 500, active about 200. Instituted a strong renovation program, implemented an independant [sic] Bible study and training Program. Organized a gospel choir and BB.T.U. Organized a Youth Church, licensed two Ministers and ordained five Deacons

**Reason for leaving:** Curently serving

**(Date)** 8/1985 to 11/1986

**(Place)** Sharon Baptist, Big Island, VA.

Had membership of about 250. I put together an organizational flow chart. Promoted a strong tithe program, purchased a church van and a church Organ and paid cash.

**Reason for Leaving:** I had a commuting distance of over 180 miles round trip and my current Church called me.

**(Date)** 11/1980 to 6/1985

(Place) County Line Bapt, Halifax, VA Vernon Hill Commun

They had an enrolled membership of over one thousand, and over five hundred active. I set up an official church office, organized a bus ministry and purchased a bus. organized a monthly news bulletin, published one book, set up a food bank, and organized South West Virginia Council for church and Social Action, Inc. Organized a male chourse [sic]

**Reason for Leaving:** The Church voted to return to two sunday a month serv and we had conflict in reference to this action.

## OTHER JOBS HELD

Past Moderator of Staunton River Baptist Association, 3 years, 32 Church Currently serving as a Postmaster with the U.S.Postal Service. Certified Rehabilitation Counselor for Virginia Dept of corrections.

Drug/alcohol and family counseling. Employment counseling and college instructor.

**LIST OFFICES AND/OR MEMBERSHIPS IN COMMUNITY OR FRATERNAL ORGANIZATIONS:**

Planner, Central shenandoah planning commission. Board member, Valley Mission. Member, Staunton Lions Club. Member, N.A.A.C.P

**LIST HOBBIES AND OTHER AREAS OF INTEREST:**

Enjoy boweling [sic], softball and writting [sic]. Enjoy political activities and special functions.

**LIST ANY HONORS RECEIVED:**

Distinguish service Plaque, Ministers alliance of Martinsville, VA. 2 Purple hearts and a Bronze Star.

Medal of Honor for Peace, Little Angels school of Seoul Korea.

**PLEASE GIVE A BRIEF STATEMENT AS TO WHY YOU CHOSE THE MINISTRY AS A PROFESSION AND WHY YOU THINK YOU WOULD LIKE TO BECOME PASTER AT MT. AIRY.**

I was called and sent by God into the ministry. He endowed me with several gifts for ministry and the gift of Pastor is one of those gifts. I believe that i could be an asset to the church and of great service. With my diversified back ground and experience, I with the assistance of the boards and members could lift your current ministries to an unsurpassed level. Finally, MT. AIRY is a great Church, and it would afford me the opportunity for full time Ministry.

**NAMES AND ADDRESSES OF FOUR REFERENCES: (At least two ministers, one layman and any other person who knows you well and can evaluate your character and job performance.)**

Bishop, James C Richardson Jr. 115 Melody Ct, Martinsville, VA. 24112

Rev. Michael Turner 329 Hoover St Staunton, VA, 24401

Mr. Charles Ross Rt 1, (Hwy 683) Fieldale, VA 24089

Vice Mayor. Douglas C Wine 1137 Richmond Ave, Staunton, Va. 24401

**EXPECTED SALARY: $** Negotiable

**SIGNATURE** /s/ Charlie P. Johnson

**DATE** 8/14/1993

**ADDRESS REPLIES TO: CHAIRMAN, PULPIT COMMITTEE**

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## APPENDIX A

## AGREEMENT

This Agreement ("Agreement"), effective as of the last date stated below, is by and between REV. C. PHILLIP JOHNSON ("Rev. Johnson") and Mount Airy Baptist Church, a corporation licensed under the laws of the District of Columbia and located at 1100 North Capitol Street, N.W., Washington, D.C. 20002 ("Mt. Airy" or "the Church") (collectively, "the Parties").

### WITNESSETH

**WHEREAS,** Mt. Airy is presently without a permanent, full-time Pastor; and

**WHEREAS,** Rev. Johnson is an ordained and licensed minister of the Baptist faith; and

**WHEREAS,** Mt. Airy is affiliated with the National Baptist Convention U.S.A., Inc.; and

**WHEREAS,** according to Baptist doctrine, each Baptist church is its own sovereign; and

**WHEREAS,** after prayerful consideration, and upon the recommendation of its Pulpit Committee, the membership of the Church voted on Saturday, June 4, 1994, to extend to Rev. Johnson the call to be Pastor of its Church; and

**WHEREAS,** Rev. Johnson has accepted the call extended to him by Mt. Airy; and

**WHEREAS,** the undersigned representatives of Mt. Airy are authorized to act on its behalf.

**NOW THEREFORE,** in consideration of the mutual promises and agreements set forth herein, the sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

1. **Term.** The term of this Agreement shall be for an indefinite period of time.

2. **Duty to Act in Good Faith.** Rev. Johnson and the Church, through its Board of Deacons and other bodies, will exercise good faith in fulfilling their respective duties under this Agreement.

3. **Duties of Rev. Johnson.** Rev. Johnson's duties shall include but not be limited to the following:

(a) Rev. Johnson's primary duty is to serve the Church as its full-time Pastor, Teacher, Leader, and Administrator; preaching shall

be one of Rev. Johnson's main functions in this capacity.

(b) Rev. Johnson shall submit to the Board of Deacons and Board of Trustees of Mt. Airy a Tentative Spiritual Plan including objectives within one hundred eighty (180) days of the date of his installation and a final version of the Spiritual Plan within one year from the date of his installation.

(c) Rev. Johnson shall be responsible for the spiritual care, nurture, and growth of Mt. Airy.

(d) Rev. Johnson shall be responsible for performing the ordinances of Communion and Baptism, ministering to the sick, officiating at funerals, weddings, and other ceremonies, and performing any other ministry deemed necessary by Rev. Johnson and the Board of Deacons to meet the Church's spiritual needs.

(e) Rev. Johnson shall represent Mt. Airy in its various affiliations, conventions, and associations.

(f) Rev. Johnson shall serve as the Administrator of the Church and of all church boards, auxiliaries, and organizations.

(g) Rev. Johnson shall maintain regular office hours.

(h) Rev. Johnson shall obtain part-time secretarial assistance in his sole discretion subject only to the budgetary provisions established by Mt. Airy for such assistance.

(i) Rev. Johnson shall notify the Chairman of the Board of Deacons of all scheduled periods of absence.

(j) Rev. Johnson shall consider Mt. Airy as his primary focus when considering outside preaching engagements, revivals, and other ministerial invitations.

4. **Duties of Mt. Airy.** The Church's duties shall include the following:

(a) Mt. Airy shall pay Rev. Johnson a total compensation package in the amount of seventy-three thousand five hundred dollars ($73,500) per year, which shall include a salary of sixty-five thousand dollars ($65,000) per year, in allowance for health insurance in the amount of three thousand dollars ($3,000) per year, contribution to a retirement plan in the amount of three thousand dollars ($3,000) per year, an allowance for vacation expenses in the amount of two thousand dollars ($2,000) per year, and an allowance for professional expenses in the amount of five hundred dollars ($500) per year. This compensation package will be negotiated annually.

(b) Mt. Airy shall provide Rev. Johnson two weeks paid vacation per year, which shall be negotiated annually.

(c) Mt. Airy shall make budgetary provision to cover Rev. Johnson's expenses pursuant to Section 3.(e) of this Agreement.

(d) Mt. Airy shall make budgetary provisions to cover the expenses of part-time secretarial

assistance for Rev. Johnson as referenced in Section 3.(h) of this Agreement.

5. **Disability.** If Rev. Johnson has served the Church under this Agreement for at least fifteen (15) years, and he should become disabled to carry on his work and fulfill his duties under this Agreement, the Church shall continue to pay Rev. Johnson his monthly base salary as long as the majority of the eligible voting members of the Church agree to such payment. The Church's payment to Rev. Johnson under this provision of this Agreement shall be reduced by any amounts he receives from any disability insurance or retirement benefits.

6. **Termination.** The following terms shall govern termination of this Agreement:

(a) If at any time the Church shall become dissatisfied with the services of Rev. Johnson, and has exhausted Matthew 18:15-35, and asks for Rev. Johnson's resignation (Psalms 105:15 and I Chronicles 16:22), the Congregation shall take a vote and be governed by the majority vote of the eligible voting members under the guidelines of Article VI. Section 2(h) of the Church Constitution. At the time of this vote, the house will be polled prior to voting and the vote shall be taken by a standing vote. A two-thirds (2/3) vote of the total eligible voting members is required to constitute a majority. If the majority of the eligible voting members vote to terminate this Agreement, the Church shall pay Rev. Johnson a minimum of three (3) months salary in advance as severance

pay. If the Church fails to make this severance payment, Rev. Johnson shall continue under this Agreement until such severance payment is made.

(b) If Rev. Johnson shall become dissatisfied or for any reason desires to resign, and the Church votes to accept his resignation, he shall be held responsible to the Church for fulfilling his duties under this Agreement for three (3) months. If the Church votes not to accept Rev. Johnson's resignation, he shall be held responsible for six (6) months.

7. **Death.** If Rev. Johnson should die while in the service of the Church, the Church shall pay for his funeral expenses and shall make a payment in the amount of his full base salary for three (3) months to his widow.

8. **Force Majeure.** Neither Party shall incur any liability to the other by reason of nonperformance of its obligations under this Agreement resulting from any act of any governmental authority, natural disaster, civil strife or other events beyond the Party's reasonable control and without its fault or negligence. Upon the occurrence of one of these events, the Parties shall attempt to resolve any problems resulting from such occurrence.

9. **Conflicts.** If any provision of this Agreement conflicts with the Church's Constitution and/or By-Laws, this Agreement shall be controlling and shall take precedent over such documents.

10. **Construction.** This Agreement shall not be construed in favor of or against any party on the basis that such party did or did not author the Agreement.

11. **Severability.** In the event any provision of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been included herein.

12. **Limitation of Liability.** The Parties agree that the Church's responsibility for any liability that may result from an act or omission on the part of Rev. Johnson in the course of his performance of his duties as Pastor of Mt. Airy shall not exceed the limitations of the liability insurance policy owned by the Church or of which the Church is a beneficiary at the time of the act or omission and that the Church will not be held responsible, expected to contribute to or indemnify Rev. Johnson for any level of liability which exceeds such policy.

13. **Miscellaneous.**

(a) This Agreement, and any modifications, thereto, shall be subject to an annual review by the Official Board of the Church.

(b) This Agreement sets forth the entire understanding of the Parties and fully supersedes any and all prior agreements or understandings, written or oral, between the Parties with respect to the subject matter hereof.

(c) This Agreement may not be modified other than by a writing signed by the Parties hereto.

(d) This Agreement shall in all respects be interpreted, construed, and enforced in

accordance with, and governed by the laws of the District of Columbia.

(e) This Agreement is not assignable.

| MT. AIRY BAPTIST CHURCH | REV. C. PHILLIP JOHNSON |
|---|---|
| By: /s/ Summerfield Smith<br>Summerfield Smith<br>Chairman, Board of Deacons | /s/ C Phillip Johnson |
| Dated: JULY 2, 1994 | Dated: JULY 2, 1994 |
| By: /s/ Emma B. Davis<br>Emma B. Davis<br>Church Clerk | |
| Dated: JULY 2, 1994 | [CHURCH SEAL] |

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
Civil Division

| | | |
|---|---|---|
| DR. C. PHILLIP JOHNSON | ) | |
| Plaintiff | ) | Civil No. 99-1124 |
| v. | ) | |
| MORRIS B. HEARD, et al. | ) | |
| Defendants | ) | |

ORDER GRANTING IN PART DEFENDANTS' MOTION TO DISMISS

Plaintiff was previously employed as the Pastor of Mt. Airy Baptist Church of Washington, D.C. pursuant to a written employment contract. Defendants were the Trustees of the Church. During a church meeting in December 1997, the congregation of the Church voted to terminate plaintiff's services as pastor. After a ruling by the Honorable Joan Zeldon that the attempted discharge of plaintiff violated the termination clause of his employment agreement, the congregation again voted, on April 18, 1998 to terminate plaintiff's services as pastor.

Plaintiff filed this suit against defendants alleging not only breach of contract, but also defamation, invasion of privacy, intentional infliction of emotional distress, and negligent infliction of emotional distress, claiming that defendants published or caused to be published false and defamatory statements about plaintiff. Defendants filed this motion to dismiss, arguing with respect to the breach of contract claim that this Court does not have subject matter jurisdiction to hear that claim. With respect to the

other claims, defendants argue that plaintiff has failed, for each claim, to state a claim upon which relief may be granted.

This Court finds that it does not have subject matter jurisdiction to hear the breach of contract claim that plaintiff raises in his complaint. "It is well established that a civil court may not interfere in matters of church government, as well as matters of faith and doctrine." *United Methodist Church v. White*, 571 A.2d 790, 793 (D.C. 1990). "The right to choose a minister without judicial intervention 'underlies the well-being of religious community, for perpetuation of a church's existence may depend upon those whom it selects to preach its values, teach its message, and interpret its doctrines both to its own membership and the world at large.' " *Id.* at 793-94 (citations omitted.)

Plaintiff's complaint is insufficient to convince this Court that this case involves anything other than an ecclesiastical dispute in which the Court has no place. Plaintiff's reliance on Judge Zeldon's past refusal to grant a preliminary injunction has no bearing on this case, because the termination vote at issue here came after Judge Zeldon made her ruling. When plaintiff filed suit for wrongful eviction after the second termination vote in Civil Action 4230-98, the Honorable Ann O'Regan Keary dismissed his suit for lack of subject matter jurisdiction.

Counts I, II, IV, and V all encompass the same allegedly defamatory acts. Plaintiff alleges that defendants published or caused to be published certain false and defamatory statements about him. With only one exception, however, plaintiff fails to adequately plead

these claims. "In order to plead defamation, a plaintiff should allege specific defamatory comments . . . by pleading the time, place, content, speaker, and listener of the alleged defamatory matter." *Caudle v. Thomason*, 942 F.Supp. 635, 638 (D.D.C. 1996). For most of the alleged defamatory statements plaintiff only indicates the date and the statement, giving no indication of who was the speaker, the publisher, or the listener. Defendants cannot be expected to defend themselves against such insufficient claims.

The only claims by plaintiff that will survive this motion are those dealing with the manual allegedly published by defendants containing plaintiff's picture and accusing plaintiff of robbing God and scattering his flock. Assuming that plaintiff's allegations as to the publication of this manual are true, plaintiff does state a cause of action for defamation, or alternatively, publicity placing person in a false light or intentional infliction of emotional distress. The negligent inflection of emotional distress claim must fail in its entirety because plaintiff has not alleged that he suffered physical injury or was in the zone of danger where he could have suffered such injury.

Accordingly,

it is this 27th day of August, 1999,

ORDERED, that defendants' Motion to Dismiss is GRANTED IN PART. Counts III and V of the complaint are dismissed in their entirety. Claims I, II, and IV continue as alternative theories of liability only for the

alleged publication of the manual bearing plaintiff's likeness.

**SO ORDERED.**

August 27, 1999
DATE

/s/ Mildred M. Edwards
MILDRED M. EDWARDS
Associate Judge
(Signed in Chambers)
[DOCKETED SEP 01 1999]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

| | |
|---|---|
| CALVIN HOLLINGSWORTH,<br>Plaintiff,<br>v.<br>C. PHILLIP JOHNSON,<br>Defendant. | Case No. 98 CA 65<br>Calendar 14<br>Judge Joan Zeldon |

MEMORANDUM AND ORDER

(February 11, 1998)

The parties came before the undersigned Judge on February 1998, for an evidentiary hearing on Plaintiffs' Complaint seek a permanent injunction against its pastor, C. Phillp Johnson, prohibiting Dr. Johnson from "(1) holding himself out as the Pastor of Mt. Airy Baptist Church; (2) coming upon the property of Mt. Airy Baptist Church, without an express invitation from the Plaintiff Board of Trustees; and (3) interfering with the business affairs of Mt. Airy Baptist Church; and (4) such other and further acts which the Court may deem proper. At the heart of this dispute is the question whether the Pastor was lawfully terminated pursuant to the employment Agreement between him and the Church (hereafter, "the Agreement") and the Constitution and By-laws of the Church. The Court will not issue an injunction because it finds that the Pastor was *not* lawfully terminated.

The Court finds that the attempted coup to terminate the Pastor violated paragraph 6(a)[1] of the Agreement. Plaintiffs offered no evidence that they had complied with preliminary steps that had to be taken under paragraph 6(a) before the congregation could vote.[2] Significantly, Plaintiff Hollingsworth testified that he had never seen an official copy of the Agreement before he and the other Plaintiffs filed this lawsuit nor did he even know about the termination clause.

Since the Pastor's termination was in violation of section 6(a) of the Agreement, it is not necessary for the

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[1] Paragraph 6(a) of the Agreement reads:

6. Termination. The following terms shall govern the termination of this Agreement:

> (a) If at any time the Church shall become dissatisfied with the services of Rev. Johnson, and has exhausted Matthew 18:15-35, and asks for Rev. Johnson's resignation (Psalms 105-15 and I Chronicles 16:22), the Congregation shall take a vote and be governed by the majority vote of the eligible voting members under the guidelines of Article VI., Sec. 2(h) of the Church Constitution. At the time of this vote, the house will be polled prior to voting and the vote shall be taken by a standing vote. A 2/3 vote of the total eligible voting members is required to constitute a majority. If the majority of eligible voting members vote to terminate this Agreement, the Church shall pay Rev. Johnson a minimum of 3 months salary in advance as severance pay. If the Church fails to make this severance payment, Rev. Johnson shall continue under this Agreement until such payment is made.

[2] The Court notes that under paragraph 9 of the Agreement, "If any provision of this Agreement conflicts with the Church's Constitution and/or By-laws, this Agreement shall be controlling and shall take precedent over such documents."

Court to describe other violations of applicable provisions of the Constitution and by-laws (e.g. Church Covenant; paragraph 4 and Article V., section 1 (1), paragraph 2).

Wherefore, it is this **11th day of February, 1998,** hereby **ORDERED,** that Plaintiff's Motion for a Permanent Injunction is **DENIED.**

/s/ Joan Zeldon
JUDGE JOAN ZELDON
Associate Judge
(Signed in Chambers)

Copies Mailed To:

Ronald C. Jessamy, Esq.
1726 M St., N.W.
Suite 1100
Washington, D.C. 20036

Craig Ellis, Esq.
1436 Fenwick Lane
Silver Spring, MD 20910

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

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| BLONDINE C. HUGHES, Plaintiff, | * | Civil Action No. 96CA9739 |
| vs. | * | Calendar 1 |
| REV. C. PHILLIP JOHNSON, Defendant. | * | Judge Alprin |

ORDER

Upon consideration of defendant's Motion to Dismiss, plaintiff's Opposition, and the court record, the court concludes that this court may not rule on church matters. Consequently, the defendant's motion to dismiss is granted.

Plaintiff has brought suit against defendant alleging that the defendant has violated the constitution and the by-laws of the church by calling a meeting to discuss the approval of selected positions in violation of the procedures of the appropriate committees. Plaintiff requests the court to enter an order declaring the meeting and notice to be in violation of the constitution and by-laws and to declare the meeting void.

Where claims involve matters of church governance and are not purely secular, resolution of such disputes is properly for church officials. *United Methodist Church v. White*, 571 A.2d 790 (D.C. 1990). In this court's view, plaintiff's complaint solely involves matters of church governance, *e.g.*, the calling of a special meeting of the

church, and the "approval of selected positions in violation of the procedures of the appropriate committees." Consequently, plaintiff has not stated a claim for which relief can be granted, and, pursuant to SCR Civ. Rule 12(b)(6), defendant's Motion to Dismiss must be granted.

Accordingly, it is this 5 day of February, 1997

**ORDERED**, that defendant's Motion to Dismiss is **GRANTED.**

/s/ Geoffrey M. Alprin
Geoffrey M. Alprin
Associate Judge
(Signed in Chambers)
[DOCKETED FEB 07 1997]

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**
**Civil Division**

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| **MARVIN HANDON,** | : | |
| **Plaintiff,** | : | **96CA002714** |
| | : | **Judge Kennedy** |
| **v.** | : | **(Calendar 8)** |
| **C. PHILLIP JOHNSON,** | : | |
| | : | |
| **Defendant.** | : | |

**ORDER**

The matter presently before the court is the defendant's motion to dismiss the plaintiff's complaint. Upon consideration of the motion, the opposition thereto, and the record of this case, the court concludes, essentially for the reasons stated by the defendant in his opposition, that the motion should be granted.

The dispute which the plaintiff presents to this court stems from the plaintiff having been "silenced" by the defendant, the pastor of Mt. Airy Baptist Church. He complains that the pastor has improperly prevented him from having the matter of his silencing presented to the "Body of the Church" in contravention of Mt. Airy's Constitution and By-laws. The plaintiff seeks to have this court conduct just the type of inquiry regarding the operation and construction of church law which the First Amendment prohibits. *United Methodist Church v. White*, 571 A.2d 790, 794 (D.C. 1990) ("a secular evaluation of procedures that ecclesiastical or canon law requires the church to follow is precisely the type of inquiry the First Amendment prohibits.")

Accordingly, it is this 7th day of June, 1996, hereby

**ORDERED** that the defendant's motion to dismiss the plaintiffs' complaint is granted.

/s/ Henry H. Kennedy, Jr.
Henry H. Kennedy, Jr.
Judge, Superior Court of the
District of Columbia
/signed in chambers/
[DOCKETED JUN 12 1996]

Copies shall be mailed to:

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Attorney for Defendant

**The UNITED METHODIST CHURCH, BALTIMORE ANNUAL CONFERENCE, Appellant,**

**v.**

**John R. WHITE, Appellee.**

**No. 88-1100.**

District of Columbia Court of Appeals.

Argued Oct. 2, 1989.
Decided March 5, 1990.

Thomas E. Starnes, with whom Thomas R. Kline, Washington, D.C. was on brief, for appellant.

Clement Theodore Cooper, Washington, D.C. for appellee.

Before ROGERS, Chief Judge, and FERREN and BELSON, Associate Judges.

ROGERS, Chief Judge:

Appellant United Methodist Church, Baltimore Annual Conference (UMC) appeals from denials of its motions to dismiss the complaint and for reconsideration on the ground that the Free Exercise and Establishment Clauses of the First Amendment of the Constitution preclude civil courts from adjudicating religious disputes involving the qualifications or fitness of clergy. Appellee John R. White alleged that he was wrongfully discharged as a minister in the United Methodist Church, Baltimore Annual Conference and sought his reinstatement in addition to compensatory and punitive damages for alleged breaches of his employment contract. We reverse.

I

John R. White was an ordained minister in the United Methodist Church, Baltimore Annual Conference.[1] He served as pastor at a number of United Methodist churches from 1970-85, and as a chaplain in the United States Air Force. In October 1984 he became severely depressed and emotionally disturbed. He was hospitalized for several months in the psychiatric ward at George Washington University Medical Center. On November 13, 1984, the Executive Committee of the Board of Ministry voted to place Rev. White on a leave of absence pursuant to ¶ 450.1 of *The Book of Discipline of the United Methodist Church, (Discipline)*. In addition, pursuant to the requirements of the *Discipline* that a minister on leave of absence may not exercise his ministry beyond the confines of his local church and that his ecclesiastical endorsement must be withdrawn, the Division of Chaplains and Related Ministries, the General Board of Higher Education,[2] and the Ministry of the United Methodist Church sent a letter on September 16, 1985, to the Air Force withdrawing Rev. White's ecclesiastical endorsement.

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[1] The United Methodist Church is composed of numerous annual conferences. Each conference covers a particular geographic jurisdiction and meets annually. The Baltimore Annual Conference covers Washington, D.C., most of Maryland and part of West Virginia. A General Conference, composed of ministers and lay members, meets every four years to discuss and pass legislation on issues of concern to United Methodists.

[2] The General Board of Higher Education is a Tennessee corporation that is not under the auspices or control of the Baltimore Annual Conference.

A year and one half later, on May 13, 1987, the Baltimore Conference Board of Ministry recommended that Rev. White's conference membership be terminated. In accordance with the *Discipline*, ¶ 455.1(f), Rev. White was sent notice of the Board of Ministry's action by letter dated May 14, 1987. The contents of the letter were read to him on June 3, 1987. Eight days later, his counsel wrote to the Chairman of the Conference Relations Committee advising that he had "reviewed, in detail, the applicable provision of the Book of Discipline." Although Rev. White had only ten days after receiving notice of the termination of his conference membership to request a church trial, counsel did not request a church trial.

Rev. White's ministerial membership in the Baltimore Conference was terminated on June 9, 1987, pursuant to a vote of the Ministerial Executive Session of the 1987 Annual Conference due to "disobedience to the Order and Discipline of the United Methodist Church." On June 24, 1987, through counsel, he requested a church trial which was denied as untimely.

On March 28, 1988, Rev. White sued UMC for breach of contract seeking reinstatement of his ecclesiastical endorsement, a letter of apology, and compensatory and punitive damages. He also sought a declaration that he had exhausted his administrative remedies and demanded a jury trial. His complaint alleged that he was wrongfully discharged and divested of his ecclesiastical endorsement, denied related hospital and retirement benefits and compensation, and otherwise injured. UMC filed a motion to dismiss the complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted. The motion was denied on

May 20, 1988. On June 6, 1988, UMC filed a motion for reconsideration or for allowance of an immediate appeal, which was also denied on July 20, 1988. UMC filed a notice of appeal on August 20, 1988.[3] Rev. White then filed a motion to dismiss the appeal on the ground that the order appealed from was not a final order. This court initially dismissed the appeal for lack of jurisdiction, but subsequently granted UMC's petition for rehearing.

II

*Jurisdiction.* Under D.C.Code § 11-721(a)(1) (1988), this court has jurisdiction to review all "final orders and judgments" of the Superior Court. In addition, appeals from certain interlocutory orders are permitted where they have a final and irreparable effect on important

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[3] Rev. White contends that UMC's appeal was untimely and should have been filed, pursuant to D.C.Code § 11-721(d) and D.C.App.R. 5(a), within 10 days of the trial judge's denial of the motion for reconsideration and allowance of an immediate appeal. These provisions apply only when the trial judge grants a request to certify an interlocutory appeal. D.C.Code § 11-721(d); D.C.App.R. 5(a).

UMC filed its appeal as a matter of right from the trial judge's decisions pursuant to D.C.Code § 11-721(a) and D.C.App.R. 4. Under Rule 4(a)(2), the timely filing of a motion to alter or amend judgment has the effect of tolling the thirty-day period for filing an appeal. The May 20, 1988, order (docketed May 24, 1988) was mailed to the parties. *See* Super.Ct.Civ.R. 6(e) (3 additional days). Hence, the motion for reconsideration was timely filed on June 6, 1988, and the time to appeal was tolled. The trial judge denied UMC's motion for reconsideration on July 20, 1988, and the appeal, filed on August 20, 1988, was timely.

rights of the parties.[4] *See Stein v. United States*, 532 A.2d 641, 643 (D.C.1987) (citing *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545, 69 S.Ct. 1221, 1225, 93 L.Ed. 1528 (1949)). *See also Jenkins v. Smith*, 535 A.2d 1367 (D.C.1987) (en banc) (affirming *Frost v. People's Drug Store, Inc.*, 327 A.2d 810, 812 (D.C.1974) (interlocutory appeal from denial of motion to dismiss for *forum non conveniens*)). To come within the narrow exception to the rule of finality as a predicate for appellate jurisdiction, there are three prerequisites:

> First, it "must conclusively determine the undisputed question"; second, it must "resolve an important issue completely separate from the merits of the action"; third, it must be "effectively unreviewable on appeal from a final judgment."

*Stein, supra*, 532 A.2d at 643 (quoting *Flanagan v. United States*, 465 U.S. 259, 265, 104 S.Ct. 1051, 1054, 79 L.Ed.2d 288 (1984)). We hold that the denial of UMC's motion to

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[4] Appellee contends that court orders, not otherwise final, are interlocutory and therefore not appealable. However, the cases on which he relies are distinguishable and support the proposition stated by appellant. *Mills v. Cosmopolitan Ins. Agency*, 442 A.2d 151 (1982) (appeal from denial of costs for appeal premature, not a final order), *but see McQueen v. Blacknall*, 547 A.2d 172, 175 (D.C.1988) (en banc) (protective order in landlord and tenant cases is an appealable interlocutory order); *Crown Oil and Wax Co. of Delaware v. Safeco Ins. Co. of Am.*, 429 A.2d 1376 (1981) (appeal from denial of motion to dismiss for *forum non conveniens* granted); *Jenkins v. Parker*, 428 A.2d 367 (1981) (denial of motion to quash an attachment is not an appealable order unless it changed or affected the possession of property).

dismiss on grounds of constitutional immunity meets these three tests.

First, the trial judge, by denying UMC's motion to dismiss and motion for reconsideration, has conclusively determined the disputed issue of UMC's claim of immunity from suit in the civil courts.

Second, the very nature of an immunity claim makes it collateral to and separable from the merits of Rev. White's claim of wrongful termination. The issue in this appeal is whether Rev. White's claims fall, as a matter of law, within the scope of UMC's First Amendment immunity. In contending that the First Amendment protects the church from judicial inquiry into Rev. White's suit, UMC does not address the merits of the assertions in Rev. White's complaint against the church. Rather, UMC contests the authority of the civil courts to adjudicate a dispute between UMC and its pastor. Thus, the elements of UMC's immunity claim are clearly independent of any liability that it may bear for Rev. White's termination. Therefore, the issues raised by the trial judge's denial of UMC's motion to dismiss are collateral to Rev. White's cause of action and will not "affect, or . . . be affected by, decision of the merits of this case." *Cohen v. Beneficial Indus. Loan Corp., supra,* 337 U.S. at 546, 69 S.Ct. at 1225.

Finally, UMC's claim of immunity under the Free Exercise Clause and the Establishment Clause of the First Amendment of the Constitution will be irreparably lost if not adjudicated before trial. Although *Stein* concerned an appeal from denial of a motion to dismiss on grounds of statutory immunity, the Supreme Court has extended the same logic to constitutional immunities and guarantees.

*See Mitchell v. Forsyth*, 472 U.S. 511, 525, 105 S.Ct. 2806, 2814, 86 L.Ed.2d 411 (1986) (essence of governmental immunity claim is freedom from legal liability for immunized acts); *Helstoski v. Meanor*, 442 U.S. 500, 508, 99 S.Ct. 2445, 2449, 61 L.Ed.2d 30 (1979) (purpose of Speech & Debate Clause immunity to prevent representative from defending themselves); *Abney v. United States*, 431 U.S. 651, 658-61, 97 S.Ct. 2034, 2039-41, 52 L.Ed.2d 651 (1977) (denial of double jeopardy claim would undermine guarantee not to be tried twice for the same crime).

The First Amendment's Establishment Clause and Free Exercise Clause grant churches an immunity from civil discovery and trial under certain circumstances in order to avoid subjecting religious institutions to defending their religious beliefs and practices in a court of law. *See NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 503, 99 S.Ct. 1313, 1320, 59 L.Ed.2d 533 (1979). Obviously, if Rev. White's claims fall within the scope of UMC's immunity, once exposed to discovery and trial, the constitutional rights of the church to operate free of judicial scrutiny would be irreparably violated. In short, UMC's immunity claim can be exercised, if at all, only before trial, and must be reviewed pretrial or it can never be reviewed at all. *See Mitchell v. Forsyth, supra*, 472 U.S. at 526, 105 S.Ct. at 2815.

Accordingly, we hold that the denial of UMC's motion to dismiss on grounds of constitutional immunity is immediately appealable as a collateral order, and that we have jurisdiction to review it in this pretrial appeal.

III

*Immunity.* The United States Supreme Court has long held that, generally, civil courts are not a constitutionally permissible forum for review of ecclesiastical disputes. *Serbian Eastern Orthodox Diocese v. Milivojevich (Serbian),* 426 U.S. 696, 710, 96 S.Ct. 2372, 2381, 49 L.Ed.2d 151 (1976); *Presbyterian Church v. Hull Memorial Presbyterian Church,* 393 U.S. 440, 449, 89 S.Ct. 601, 606, 21 L.Ed.2d 658 (1969); *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church,* 344 U.S. 94, 116, 73 S.Ct. 143, 154, 97 L.Ed. 120 (1952); *Gonzalez v. Roman Catholic Archbishop,* 280 U.S. 1, 50 S.Ct. 5, 74 L.Ed. 131 (1929); *Watson v. Jones,* 80 U.S. (13 Wall.) 666, 20 L.Ed. 485 (1871). There are limited exceptions, as, for example, where an employee has provided a purely secular service for the church, civil courts have extended jurisdiction. *See Corporation of Presiding Bishop v. Amos,* 483 U.S. 327, 330-32, 107 S.Ct. 2862, 2865-66, 97 L.Ed.2d 273 (1987) (building engineer possessed no duties remotely related to religious beliefs or duties); *EEOC v. Pacific Press Publishing Ass'n,* 676 F.2d 1272 (9th Cir.1982) (Civil Rights Act applied to editorial secretary in a church publishing house); *EEOC v. Mississippi College,* 626 F.2d 477 (5th Cir.1980), *cert. denied,* 453 U.S. 912, 101 S.Ct. 3143, 69 L.Ed.2d 994 (1981) (Civil Rights Act applied to secular employment decisions of religious institution). Also, in extremely limited circumstances, courts have adjudicated conflicts between church and clergy when the issue has been whether church officials had the authority to effect a pastor's discharge, as distinct from whether the church's decision was correct *Vincent v. Raglin,* 114 Mich.App. 242, 318 N.W.2d 629, 631 (1982) (church trustees did not have authority to remove pastor). *See Stony Island Church of*

*Christ v. Stephens*, 54 Ill.App.3d 662, 12 Ill.Dec. 299, 369 N.E.2d 1313 (1977) (elders had authority to terminate pastor's employment); *Antioch Temple, Inc. v. Parekh*, 383 Mass. 854, 422 N.E.2d 1337 (1981) (court gave effect to decision of congregation); *Holt v. Trone*, 341 Mich. 169, 67 N.W.2d 125 (1954) (elders had no authority to remove pastor because congregation had removed elders); *Tate v. Walker Memorial Baptist Church*, 282 A.D. 675, 122 N.Y.S.2d 182 (1953) (congregation as a whole had authority to expel minister); *Walker Memorial Baptist Church v. Saunders*, 285 N.Y. 462, 35 N.E.2d 42 (1941) (plaintiff had no power to expel minister).

Rev. White does not contend that he was removed from the United Methodist Church, Baltimore Annual Conference by a person without the authority to remove him. Rather, he maintains that he was wrongfully terminated as a result of mistaken judgments by church officials and misapplication or violation of the *Discipline*, and that he was wrongfully denied hospital and retirement benefits and compensation during his illness. He seeks judicial evaluation of the basis for the church's decision to terminate him and, ultimately, an order directing reinstatement of ecclesiastical endorsement by the UMC. In addition, he seeks compensation for the benefits which he alleges were promised under the terms of his negotiated employment contract.

Despite civil court adjudication in the limited circumstances noted above, it is well established that a civil court may not interfere in matters of church government, as well as matters of faith and doctrine. *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church, supra*, 344 U.S. at 116, 73 S.Ct. at 154. Such ecclesiastical decisions

are generally beyond the jurisdiction of secular courts. *Rayburn v. General Conf. of Seventh-Day Adventists*, 772 F.2d 1164, 1167 (4th Cir.1985), *cert. denied*, 478 U.S. 1020, 106 S.Ct. 3333, 92 L.Ed.2d 739 (1986). Indeed, "civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchial polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom or law." *Serbian Eastern Orthodox Diocese v. Milivojevich, supra*, 426 U.S. at 713, 96 S.Ct. at 2382.

The right to choose a minister without judicial intervention "underlies the well-being of religious community, for perpetuation of a church's existence may depend upon those whom it selects to preach its values, teach its message, and interpret its doctrines both to its own membership and the world at large." *Rayburn v. General Conf. of Seventh-Day Adventists, supra*, 772 F.2d at 1167-68. *See Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church, supra*, 344 U.S. at 116, 73 S.Ct. at 154. Any attempt by the civil courts to limit the church's choice of its religious representatives would constitute an impermissible burden on the church's First Amendment rights. *Rayburn v. General Conf. of Seventh-Day Adventists, supra*, 772 F.2d at 1168. *See Kaufmann v. Sheehan*, 707 F.2d 355, 358 (8th Cir.1983). *See also McClure v. Salvation Army*, 460 F.2d 553, 560 (5th Cir.1972) ("[a]n investigation and review of such matters of church administration and government as a minister's salary, his place of assignment, and his duty, . . . could only produce by its coercive effect the very opposite of that separation of church and State contemplated by the Constitution."). Consequently, courts have

concluded that employment disputes concerning the status of pastors are inherently ecclesiastical and cannot constitutionally be subject to review. *See Minker v. Baltimore Annual Conference of United Methodist Church,* 894 F.2d 1354, 1356 (D.C.Cir.1990) (pastor's suit for violation of federal age discrimination statute dismissed); *Rayburn v. General Conf. of Seventh-Day Adventists, supra,* 772 F.2d 1164 (minister's claims of race and sex discrimination dismissed); *Simpson v. Wells Lamont Corporation,* 494 F.2d 490 (5th Cir.1974) (United Methodist minister's suit for wrongful discharge dismissed); *Hutchinson v. Thomas,* 789 F.2d 392 (6th Cir.), *cert. denied,* 479 U.S. 885, 107 S.Ct. 277, 93 L.Ed.2d 253 (1986) (Methodist minister's common law claims challenging forced retirement by the church dismissed); *Knuth v. Lutheran Church Missouri Synod,* 643 F.Supp. 444 (D.Kan.1986) (discharged pastor's claim of breach of contract and implied duty of good faith and fair dealing, seeking damages for removal and attempt to regain pastoral status, dismissed); *Hafner v. Lutheran Church-Missouri Synod,* 616 F.Supp. 735 (N.D.Ind.1985) (pastor's suit for alleged denial of benefits based on interpretation of church synod constitution dismissed). Rev. White's complaint for reinstatement and damages resulting from his divestment fall well within those matters protected from secular judicial scrutiny.

The *Discipline* of the United Methodist Church is a religious document which this court cannot construe without usurping the rights of the UMC to construe its own law. *Knuth v. Lutheran Church Missouri Synod, supra,* 643 F.Supp. at 448. A secular evaluation of procedures that ecclesiastical or canon law requires the church to

follow is precisely the type of inquiry the First Amendment prohibits. *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. at 713, 96 S.Ct. at 2382. The grounds for Rev. White's suit are set forth in the Discipline and arise from his claim that the church failed to comply with its own regulations. His brief in this court is replete with religious interpretations, demonstrating the impossibility of resolving his divestment claims without construing church doctrine. Accepting Rev. White's allegations as true for the purposes of this appeal,[5] this court, in order to review the merits of his claims would necessarily become entangled in matters of a highly religious nature, issues at the core of internal church discipline, faith and church organization. *Kaufmann v. Sheehan, supra*, 707 F.2d at 358. Accordingly, we hold that the UMC is immune from defending its decision to terminate Rev. White.

This does not end our consideration, however, for Rev. White alleges that while he was a member of the UMC he was denied benefits to which he was entitled pursuant to his employment contract with UMC. Specifically, he alleges that when he was hospitalized, UMC breached his contract by improperly depriving him of hospital and sick benefit coverage as well as compensation to which he was entitled, and upon termination, by denying him retirement benefits. Rev. White does not rely

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[5] For purposes of ruling on the motion to dismiss, the allegations of his complaint must be taken as true and liberally construed. *McBryde v. Amoco Oil Co.*, 404 A.2d 200, 202 (D.C.1979).

on a written contract,[6] but alleges that his ordination and various church appointments give rise to an implied contract and implied covenants of good faith and fair dealing. *See Bloomgarden v. Coyer,* 156 U.S. App.D.C. 109, 116, 479 F.2d 201, 208 (1973). *Cf. Carnes v. Smith,* 236 Ga. 30, 222 S.E.2d 322 (1976) (trust arises from provisions of the church book of discipline).

While the Supreme Court has long held that civil courts are constitutionally prohibited from inquiring into allegations that would involve church polity and practices, the Court also has long recognized in limited circumstances that the church is not above the law. *See, e.g., Jones v. Wolf,* 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979) (neutral principles applied to church property dispute). Federal circuit courts of appeal have held that the church is not above the law and may be held liable for valid contracts. *Minker v. Baltimore Annual Conference of United Methodist Church, supra,* 894 F.2d at 1358-59.[7] *See Rayburn v. General Conf. of Seventh-Day Adventists, supra,* 772 F.2d at 1171. *See also EEOC v. Southwestern Baptist Theological Seminary,* 651 F.2d 277 (5th Cir.1981), *cert.*

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[6] Rev. White relies on *Jewish Center of Sussex County v. Whale,* 86 N.J. 619, 432 A.2d 521 (1981), and *Kupperman v. Congregation Nusach Sfard,* 39 Misc.2d 107, 240 N.Y.S.2d 315 (N.Y.Sup.Ct.1963), cases which involved written employment contracts. See note 11, *infra.*

[7] In *Minker* the pastor claimed a contractual breach relating to his assignment to a pastorage. His claims allegedly arose from a contract claim separate and apart from church policy or a church religious document. *See* 894 F.2d at 1360-61. In this respect, Rev. White's claim is readily distinguishable from that of Rev. Minker.

*denied*, 456 U.S. 905, 102 S.Ct. 1749, 72 L.Ed.2d 161 (1982); *EEOC v. Pacific Press Publishing Ass'n., supra*, 676 F.2d 1272; *EEOC v. Mississippi College, supra*, 626 F.2d 477; *Whitney v. Greater New York Corporation of Seventh-Day Adventists*, 401 F.Supp. 1363 (S.D.N.Y.1975).[8]

As styled in his complaint, Rev. White has not clearly delineated how his benefit claims are separate from his ecclesiastical claims. In describing the nature of his contract he relies on the "contract of the highest degree of integrity" arising as a result of his ordination, which contract he claims he fully performed. Consequently, in order to reach Rev. White's contention that he was improperly denied benefits promised under his contract, the civil court would necessarily inquire into whether UMC accorded its minister the benefits to which he was entitled under a contract deriving from the *Discipline*. Rev. White does not allege the absence of a decision by church officials or tribunal on these matters or that they do not involve questions of discipline, organization, faith or religious law. *See, Watson v. Jones, supra*, 80 U.S. (13 Wall.) at 727, 729, 20 L.Ed. 485 (church decision on discipline, faith, or ecclesiastical rule, custom or law must be accepted by civil courts). Indeed, his request for a declaration that he has exhausted his administration remedies suggests that there are such church remedies available to respond to his claims of entitlement to certain benefits.[9]

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[8] See note 10, *infra*.

[9] We do not reach the issue of whether Rev. White has exhausted his administrative remedies. In his complaint, however, he refers to the fact that he appeared, without counsel, before the Executive Conference. His counsel also wrote to the

Although UMC does not concede that it had a contract with Rev. White, neither does it contend that it was not obligated to live up to its obligations to Rev. White. Rather UMC maintains that because Rev. White is a minister, these are matters of inquiry from which the civil courts are precluded. It relies on *Dowd v. Society of St. Columbans*, 861 F.2d 761; *McClure v. Salvation Army, supra*, 460 F.2d at 560 and *Hafner v. Lutheran Church-Missouri Synod, supra*, 616 F.Supp. at 737. These cases are not exactly on point, however. McClure involved a request that the court evaluate church practices with respect to sex discrimination. The contract claims for health and disability benefits in *Hafner* arose from a broad provision of a religious document to determine whether such benefit promises fell within that provision. *Dowd* is of little assistance since the decision turned on inadequate factual allegations of wrongdoing by the defendant. Here, by contrast, Rev. White seeks, in an otherwise adequate complaint, *see* Super.Ct.Civ.R. 8(a), only to hold UMC to promises it allegedly made as the result of its own policy choices in the course of negotiating a contract with him.

Nevertheless, we conclude that a determination of Rev. White's benefit claims would involve more than simply the secular questions of whether such promises were made by UMC and, if so, whether the benefits were properly denied to Rev. White. His complaint links the circumstances of his contractual rights and alleged

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chair of UMC's Conference Relations Committee expressing concern about Rev. White's hospital and disability benefits, referring in the letter to the exhaustion of administrative remedies.

breaches to the circumstances surrounding his ordination and divestment of ecclesiastic endorsement. Rev. White's benefit claims are, as UMC contends, ancillary to his claim of improper divestment. Courts have, so far as we have found, unanimously recognized that such claims involve matters of church governance and are not purely secular matters, and in the absence of church invocation of the civil courts, resolution of such disputes is properly for church officials. *See, e.g., Hafner v. Lutheran Church-Missouri Synod, supra,* 616 F.Supp. at 739; *McClure v. Salvation Army, supra,* 460 F.2d at 559; *Dowd v. Society of St. Columbans, supra,* 861 F.2d at 764. *See also Gipe v. Superior Court for County of Orange,* 124 Cal.App.3d 617, 628, 177 Cal.Rptr. 590, 595.[10] Even in situations in which a written

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[10] In Gipe the court held that it had jurisdiction to determine whether severance pay had been conditionally promised to a minister and, if so, whether the conditions had been met, viewing the dispute as involving the ownership or right to property. The cases relied on in *Gipe* however, involve situations in which the church sought the intervention of the civil court or the judgment of the civil court was reversed. *See Gipe v. Superior Court for County of Orange, supra,* 124 Cal.App.3d at 628, 177 Cal.Rptr. at 595 (citing *Eldership v. Church of God at Sharpsburg,* 396 U.S. 367, 368, 90 S.Ct. 499, 500, 24 L.Ed.2d 582 (1970) (regional church sued local churches and others to prevent withdrawal from regional church and to determine control of church property); *Presbyterian Church v. Hull Church,* 393 U.S. 440, 449, 89 S.Ct. 601, 606, 21 L.Ed.2d 658 (1969) (injunction granted to local churches to enjoin trespass on church property reversed since based on civil court interpretation of church doctrine); *Presbytery of Riverside v. Community Church of Palm Springs,* 89 Cal.App.3d 910, 920, 152 Cal.Rptr. 854, 859, *cert. denied,* 444 U.S. 974, 100 S.Ct. 469, 62 L.Ed.2d 389 (1979) (neutral principles of law applied to property dispute between general church and local church); *Samoan*

contract has been involved, the basis for civil court jurisdiction in the cases on which Rev. White relies, turned on circumstances not present here.[11]

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*Congregational Christian Church in the United States v. Samoan Congregational Christian Church of Oceanside*, 66 Cal.App.3d 69, 75-77, 135 Cal.Rptr. 793, 796-98 (1977) (association of churches sued to impress trust on assets of member church); *Metropolitan Baptist Church of Richmond, Inc. v. Younger*, 48 Cal.App.3d 850, 858-59, 121 Cal.Rptr. 899, 903-05 (1975) (church petitioned for authority to distribute liquidated assets)). *See also Stony Island Church of Christ v. Stephens*, 54 Ill.App.3d 662, 12 Ill.Dec. 299, 369 N.E.2d 1313, 1317 (1977) (church sued to remove minister from church premises and to restrain interference with church property; vacation of arbitration award concerning contractual dispute regarding termination of services and right to possession of church property not involving any element of religion). Consequently, *Gipe* can offer little solace to Rev. White.

[11] For example, in *Kupperman v. Congregation Nusach Sfard, supra*, 39 Misc.2d 107, 240 N.Y.S.2d 315, a rabbi sued a congregation over his discharge and for salary that was due and sought injunctive relief. The court, in entering judgment for the rabbi, held that because the congregation had independent authority to call and remove its rabbi, the structure of the religious faith meant that the dispute at issue was a temporal matter concerning the authority to discharge and whether notice, as required under the contract, was properly given. In granting injunctive relief, the court, in effect, affirmed the rabbinical tribunal's decision in favor of the rabbi.

In *Jewish Center of Sussex County v. Whale*, 397 A.2d 712 (N.J.1978), the Jewish Center sought to rescind a contract with a rabbi on the ground that he had failed to disclose his prior criminal record and disbarment as an attorney, and to dismiss the rabbi's counterclaim based on breach of contract and specific performance.

*Forest Hills Early Learning Center v. Grace Baptist Church, supra*, 846 F.2d 260, involved a challenge brought by secular day care centers to a state statute exempting religiously affiliated

Accordingly, the order denying the motion to dismiss the complaint is reversed and the case remanded to the trial court with instructions to dismiss the complaint.

---

child centers from state licensing requirements. The Fourth Circuit, citing *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos (Amos)*, 483 U.S. 327, 107 S.Ct. 2862, 97 L.Ed.2d 273 (1987), held that the statute did not violate the establishment clause, reversing the District Court decision that state licensing requirements would not interfere with church-run child care centers and free exercise of religion and were justified by compelling state interest to the extent that they did. The Fourth Circuit concluded that there was no principled basis on which to distinguish between the result reached in *Amos, supra,* involving employment practices in a gymnasium, and "prevent[ion of] state interference with church programs that provide education and child care programs." 846 F.2d at 164.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

| | | |
|---|---|---|
| Mt. Airy Baptist Church<br>1100 North Capitol Street, N.W.<br>Washington, D.C. 20002<br>and<br>Rev. Dr. C. Phillip Johnson<br>1100 North Capitol Street, N.W.<br>Washington, D.C. 20002<br>Plaintifffs,<br><br>v.<br><br>Calvin Hollingsworth<br>6131 First Place, N.E.<br>Washington, D.C. 20011<br>and<br>Anna Chin<br>Leroy Chin<br>410 Oneida Street, N.W.<br>Washington, D.C. 20011<br>and<br>Thomas Peterson<br>1019 31st Street, S.E.<br>Washington, D.C. 20019<br>and<br>Lillie Proctor<br>2910 10th Street, N.E.<br>Washington, D.C. 20017<br>and<br>Carolyn Samuels<br>5555 Chillum Place, N.E.<br>Washington, D.C. 20011 | ) | Civil Action No.<br>CA4230-98 |

and )
Charles Manuel )
3337 Alden Place, N.E. )
Washington, D.C. 20011 )
and )
Stanley A. Garnett )
5348 Call Place, S.E. #6 )
Washington, D.C. 20019 )
and )
Terry Nixon )
6813 Springshire Way )
Greenbelt, MD 20770 )
and )
Morris B. Heard )
4115 10th Street, N.E. )
Washington, D.C. 20011 )
Defendants. )

**COMPLAINT FOR PERMANENT INJUNCTIVE RELIEF, CONVERSION OF PROPERTY AND DAMAGES**

Jurisdiction

1. The Court has jurisdiction of the actions pursuant to D.C. Code § 11-921 (1981 ed.) and Rule 23 Superior Court Rules – (Civil).

2. Plaintiff, Mt. Airy Baptist Church is a non-profit religious corporation organized under D.C. Code 29-907, (1981 ed.) and is in good standing, hereinafter referred to as "Church".

3. Rev. Dr. C. Phillips [sic] Johnson was employed as Pastor (herein referred to as "Pastor" by the "Church" by contract dated July 2, 1994 and still serves as "Pastor".

4. Said "Church" was founded in 1893 and was incorporated under the laws of the District of Columbia on March 22, 1908.

5. The "Church" is the owner of the real estate known as 1100 Capitol Street, N.W., Washington, D.C. 20002, where it carries out its services.

6. The "Church" has duly adopted a Constitution and By-Laws dated September, 1986 which serves as its governing authority which vests plenary authority in its congregation provided for in Article IV in pertinent part:

> "The government of this Church is vested in the body of believers who compose it. . . . "

7. Defendants illegally sought to terminate the services of the Pastor in Civil Action No. 98CA65. See memorandum opinion, Zeldon J. attached as Exhibit #1, dismissing the case.

First Claim – (Wrongful Eviction)

1. The allegations of paragraphs one through seven are incorporated by reference.

2. At all times relevant plaintiffs were entitled to access to the "Church" property and facilities based upon their membership and in good standing.

3. Having failed in their efforts to unlawfully and unconstitutionally oust the "Pastor", defendants on or about [sic] maliciously disrupted the services held at the "Church" on May 17, 1998 requiring the "Church" and "Pastor" to seek intervention of the Metropolitan Police.

4. That on or about May 22, 1998, defendants "locked" the doors of the "Church" thereby denying access to plaintiff to carry out its purposes.

5. That on or about May 24, 1998, defendants maintained the aforementioned lock out denying plaintiff's access to the "Church" making it necessary to carry out services on the front lawn of the "Church".

6. Plaintiff "Pastor" is denied access to his study containing valuable proverbs and numerous other items of value have been converted to by defendants.

7. The acts so alleged constitute trespass and wrongful eviction of plaintiff in violation of the laws of the District of Columbia.

8. Plaintiffs by the wrongful eviction from its property suffer irreparable injury from which it may never recover.

**WHEREFORE,** plaintiff seeks compensatory damages in the amount of $250,000 and $250,000 in punitive damages.

Second Claim – Conversion

The allegations one through seven are incorporated by reference.

3. Rev. Dr. C. Phillips [sic] Johnson was employed as Pastor hereinafter referred to as "Pastor" was employed by the "Church" as Pastor by contract dated July 2, 1994 and still serves.

4. Said "Church" was founded in 1893 and incorporated on March 22, 1907 as herein before mentioned.

5. The "Church" has duly adopted "Constitution and By Laws" dated September 1986, which serves as its governing document and *vests the plenary government of the "Church" exclusively in its Congregation* as provided for in Article IV.

> "The government of this Church is vested in the body of believers who compose it. . . . "

First Claim – Wrongful Eviction

6. Defendants illegally sought to terminate the services of the "Pastor" and failed by vote of the "Pastor" and failed by vote of the congregation Civil Action No. 98CA65. See Memorandum Opinion of Zeldon, J. attached as Exhibit #2.

7. Having ailed in the aborted effort to oust the Pastor illegally, on or about May 17, 1998, defendants in a consented effort disrupted the worship services then in process and were restrained by the Metropolitan Police.

8. On or about May 22, 1998, defendants changed the locks on the doors of the "Church" thereby thwarting Bible Studies.

9. On May 24, 1998, defendants continuing the "lock" thereby preventing the congregation access to Church facilities making it necessary for the congregation outdoors on the front lawn of the "Church".

10. That despite the good faith efforts of Pastor and Church to carry out the very functions for which it was established, defendant continue to conspire and engage in acts contrary to law, the Constitution and By-laws of

the "Church" and in violation of the contract of employment of the "Pastor".

11. The defendants have removed from the subject premises and/or has withheld from the "Pastor" all of his personal belongings including but not limited to:

(a) personal clothing
(b) books
(c) papers
(d) documents
(e) Pastoral materials and items.

12. Defendants have failed and refused to return these items, and is holding without right and thus have converted them to their use.

Plaintiffs demands judgment against the defendants in an unspecified amount subject to proof at trial.

Class Action Allegations

1. This action is brought, and may properly be maintained as a class action pursuant to the provisions of the Superior Court Rules. More specifically, Rules 23(a)(1)-(4) and Rule 23(a). Plaintiffs bring this class action on behalf of themselves and all others similarly situated, as representative members of the plaintiff class. The members of class is as follows:

> Consist of all dues paying members, who are in standing, of. In short, Class consist of all members of the Congregation of Mt. Airy Baptist Church who were in good standing on the dates and times of the occurrences complained of hereinafter.

2. Size of the Class: The Class is so sufficiently numerous that joinder of al members of each class would be impracticable to bring them all before the Court in a single action. Moreover, the filing of multiple mini-law-suits would be economically burdensome on individual plaintiffs and the Court and would tend to create a vexations litigious atmosphere and would create an additional burden on the Court's backlog of civil cases. Because of the consensus of opinion and the will of the majority of the members, in good standing, Mt. Airy Baptist Church, the exact number and identities of the Class Action Plaintiff is unknown at this time, and can only be literally ascertained through appropriate discovery. However, upon information and belief, the total numerical structure of class consist of well over one hundred Class action plaintiffs may be properly and readily identified from Church records. Pursuant to their identification, and because the membership is fairly confined, Class Action Plaintiffs may be notified of the pendency of this action by Certified Mail and Regular Mail and by three (3) announcements, in writing, at the end of three (3) services held on Sundays immediately following the filing of the pending action.

2. Typically of Claims: The claims of the named individuals and Representative Plaintiffs are typical of the claims of the classes they represent. Plaintiffs claim that they have sustained damages and injuries and infringement upon the powers vested in them as members of the Congregation of Mt. Airy Baptist Church. That the action by the Defendants, as complained of herein, have been invasive, intrusive, illegal, constituted an usurp of powers, have cause a violation of the Trust

reposed in members of the Board of Trustees have been dictatorial by the Defendants, have been fraudulently inspired and perpetrated; have worked a fraud on the public so as to corrupt the judicial machinery; that the alleged empowerment of the Defendants was obtained by what in effect is a coup d'etat.

3. Adequacy of Representation: The named Individuals and representative Plaintiffs will fairly and adequately protect the interests of the members of each class and have retained an attorney experienced in the prosecution of legal actions, to represent the Class Plaintiffs herein.

4. Common Questions and Law and Fact: Plaintiffs allege that there are common questions of law and fact exist as to all members of the class which predominate over any questions affecting only individual members of each class. These common legal and factual questions include, but are not limited to the following:

> Whether the so-called "**Board of Trustees**" have the power and authority to act in derogation of the power and authority of the Congregation of Mt. Airy Baptist Church?
>
> Whether the so-called "**Board of Trustees**" can close the Church building and thereby prohibit worship and other church related activities in derogation to the authority of the Congregation?

5. Superiority of Class Action: A class action is superior to other available methods for the fair and efficient adjudication of this litigation, since individual joinder of the all members of each class is impracticable. Even if any group of class members themselves could

afford individual litigation, it would be unduly burdensome to the Courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties and to the court system, of resolving the controversies engendered by the Defendant's conduct. By contrast, the class action device presents far and fewer management difficulties and provides the benefits of unitary adjudication, economies of scale, and comprehensive supervision by the Court.

6. Certificate of Injunctive/Equitable and Legal Relief Claims under Rule 23, S.C.R.; Individualized litigation also presents the potential for: (1) inconsistent or varying adjudications with respect to the individual members of the class which would establish incompatible standards of conduct for the Defendant, or (2) adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of the members not parties to the adjudication, or would substantially impair or impede their ability to protect the individual interests. Finally, the Defendants have acted and refused to act on grounds generally applicable to the classes.

7. On or about May 17, 1998, plaintiff, Rev. Dr. C. Phillip Johnson attempted to gain access to the Church building and members of the Church were disrupted by defendants.

8. That plaintiffs, Mt. Airy Baptist Church is deprived access to its Church building and the right to their free exercise of religion as is the stated purpose of the congregation.

9. That plaintiff, Rev. Dr. C. Phillip Johnson, has been wrongfully deprived access to the Church building and the office of Pastor to serve the Congregation for which he was selected.

10. In view of the foregoing, plaintiffs pray:

a. That the action pending be certified as a Class Action, upon proper filing of a motion to that effect.

b. That the Court enter an order enjoining the defendants from engaging in any and all future illegal acts contrary to plaintiffs-Congregation Constitution and By-Laws.

c. That Defendants immediately remove locks from all doors preventing the access to Church facilities by Pastor and members.

d. That Court award monetary damages and expenses in connection with the prosecution of this action.

e. That the Court award attorneys fees and costs. That the Court issue a preliminary and permanent injunction against the defendants.

f. And for such other and further relief as the Court may deem necessary and proper.

Respectfully submitted,

/s/ C. Phillip Johnson
Rev. Dr. C. Phillip Johnson

/s/ Summerfield Smith
Summerfield Smith, Chairman
Deacon Board

SUBSCRIBED AND SWORN before me on 5th day of June, 1998.

/s/ Cecelia M. Bakara
NOTARY

My Commission Expires June 20, 2001

Application for Temporary Restraining Order

Plaintiffs, Mt. Airy Baptist Church and C. Phillip Johnson, Pastor, pursuant to Rule 65(b) – Civil – request that a Temporary Restraining Order be issued restraining the defendants from barring plaintiffs access to the Church property – Mt. Airy Baptist Church, 1100 North Capitol Street, N.W., Washington, D.C.; from removing any possessions of plaintiff, "Pastor", C. Phillip Johnson, from the premises and from otherwise interfering with plaintiffs' peaceful employment of said property, pending a hearing and determination of plaintiffs' motion for a preliminary injunction.

In support of his application, plaintiffs' refer the Court to the attached memorandum of Points and Authorities, exhibits and affidavit(s) of "Pastor", C. Phillip Johnson and

/s/ Summerfield Smith
Summerfield Smith

/s/ James T. Wright
James T. Wright
Attorney for Plaintiffs
805 Florida Avenue, N.W.
Washington, D.C. 20001
(202) 232-1940

/s/ C. Phillip Johnson
C. Phillip Johnson

DISTRICT OF COLUMBIA, ss:

Personally appeared before me, Deacon Summerville Smith and Rev. Dr. C. Phillip Johnson, Pastor, who depose and say that they have read and that they are familiar with the contents of the foregoing Complaint by them subscribed and that the matter, allegations, and things

contained therein, they verily believe to be true to the best of their information, knowledge, and belief.

/s/ C. Phillip Johnson
Rev. Dr. Phillip Johnson, Pastor

/s/ Summerfield Smith
Summerville Smith, Chairman
Board of Deacons

/s/ C. Phillip Johnson
Rev. Dr. C. Phillip Johnson, Pastor

Certificate of Counsel under Rule 65(B)

I hereby certify that defendant has received notice of the filing of this action and the scheduling of this hearing as follows:

1. Calvin Hollingsworth
2.

Respectfully submitted,

/s/ James T. Wright
James T. Wright, 90191
Attorney for Plaintiffs
805 Florida Avenue, N.W.
Washington, D.C. 20001
(202) 232-1940

## AFFIDAVIT OF NOTICE

The undersigned hereby certify that on the _____ day of June, 1998, he notified defendant by telephone of plaintiffs' intention to seek a temporary restraining order on the _____day of June, 1998.

/s/ James T. Wright
James T. Wright, 90191
Attorney for Plaintiffs
805 Florida Avenue, N.W.
Washington, D.C. 20001
(202) 232-1940

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## AFFIDAVIT OF PLAINTIFF C. PHILLIP JOHNSON

Rev. Dr. C. Phillip Johnson, being first duly sworn on oath deposes and says:

1. That he is the duly installed "Pastor" of Mt. Airy Baptist Church.

2. That he was employed by a written contract which remains in full force and effect.

3. That the defendants in CA No. 00065-98 illegally sought to terminate his service.

4. That said cause of action was dismissed by this Court, Zeldon J.

5. That thereafter he and the plaintiffs "Church" sought to carry the program for which it was established with the leadership of plaintiff Paster.

6. That notwithstanding defendants on May 17, 1998 unlawfully and maliciously interfered with and disrupted the services of the "Church" necessitating the intervention of the Metropolitan Police Department.

7. On or about May 24, 1998, defendants unlawfully and willfully locked the doors of the "Church" preventing any action on the "Church" property making it necessary for the "Church" and Pastor to hold service out doors on the "Church" lawn.

8. To the present time plaintiffs are still locked out and prevented access to the "Church" property and facilities.

9. That the aforementioned conduct on the part of the defendant's is in effect an illegal take over of the "Church" property by the Trustees who have not been authorized by the congregation when they were locked out.

/s/ C. Phillip Johnson
C. Phillip Johnson, Pastor

SWORN AND SUBSCRIBED before me this 5th day of June, 1998.

/s/ Cecelia M. Bakare
Notary
My Commission Expires
June 30, 2001

CERTIFICATE OF SERVICE

Copy of the foregoing copies of the plaintiff's application for Temporary Restraining Order, Motion for Preliminary Injunction, Points and Authorities in support thereof; Waiver of Bond; Counsel's Certificate Under Rule 65(B); Notice of Application for Temporary Restraining Order with accompanying Order.

Respectfully submitted,

/s/ James T. Wright
James T. Wright, 90191
Attorney for Plaintiffs
805 Florida Avenue, N.W.
Washington D.C. 20001
(202) 232-1940

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**AFFIDAVIT ON BEHALF OF "CHURCH" BY SUMMERFIELD SMITH, CHAIRMAN, DEACON BOARD**

District of Columbia, SS:

Summerfield Smith, being first duly sworn on oath deposes and says:

1. That he is a long time member in good standing at Mt. Airy Church.

2. That he is the Chairman of the Board of Deacons.

3. That as Chairman of the Board of Deacons, he is the 2nd Executive Officer of the "Church" as provided in Article IV of the Mt. Airy Baptist Church in pertinent part

"Executive Officers": (1) Pastor; (2) Pastor, Chairman, Board of Deacons . . . "

4. That at a duly constituted of "Church" congregation, the result of the vote, Rev. Dr. C. Phillip Johnson was retained as "Pastor".

5. That there has been no action by the "Church" congregation to authorize the Board of Trustees to "take over" the "Church" facilities and lock out the congregation.

6. That the action by the Trustees has not been authorized or approved by the "Church" congregation.

/s/ Summerfield Smith
Summerfield Smith, Chairman
Board of Deacons
Mt. Airy Baptist Church

SUBSCRIBED AND SWORN before me this 5th day of June, 1998.

/s/ Cecelia M. Bakare
Notary
My Commission Expires
June 30, 2001

**AFFIDAVIT OF EMMA B. DAVIS**
**CHURCH CLERK**
**MT. AIRY BAPTIST CHURCH**

District of Columbia, SS:

Emma B. Davis, being first duly sworn on oath deposes and says that she is the Clerk for Mt. Airy Baptist Church and a member in good standing.

2. The duties of Church Clerk are prosecuted as follows in part:

> "Clerk shall maintain all records of the "Church". Shall record and maintain all actions taken by the "Church".

3. That as Clerk for said "Church" she states that the "Church" congregation of Mt. Airy Baptist Church has taken no official action which results in the dismissal of the Pastor Rev. Dr. C. Phillip Johnson.

4. That the "Church" congregation has taken no action authoritizing the "Trustees" defendants removed herein to "lock out the Pastor, Rev. C. Phillip Johnson or the member from the lawful use of "Church" property and facilities.

/s/ Emma B. Davis
Emma B. Davis, Church Clerk
Mt. Airy Baptist Church

SUBSCRIBED AND SWORN before me this 5th day of June, 1998.

/s/ Cecelia M. Bakare
Notary
My Commission Expires
June 30, 2001

**AFFIDAVIT OF CECELIA M. BAKARE**
**OFFICIAL BOARD SECRETARY**
**MT. AIRY BAPTIST CHURCH**

District of Columbia, ss:

Cecelia M. Bakare, being first duly sworn on oath deposes and says:

1. That she is a member in good standing of Mt. Airy Baptist Church.

2. That she serves as Secretary of the Official Board of said "Church."

3. That to her knowledge no official or the "Church" congregation has authorized the Trustee Board of the "Church" to lock the doors of the "Church" preventing all the activities of the "Church."

/s/ Cecelia M. Bakare
Cecelia M. Bakare
Official Board Secretary
Mt. Airy Baptist Church

Subscribed and sworn to before me this 5th day of June, 1998.

/s/ Illegible
Notary Public
My Commission Expires
June 30, 2001